

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

Black Oak Energy, LLC)	Docket No. EL08-14-010
EPIC Merchant Energy, LP and)	
SESCO Enterprises, LLC)	
)	
v.)	
)	
PJM Interconnection, Inc.)	
)	
)	

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

Pursuant to Rules 212 and 213 of the Commission’s Rules and Regulations, 18 CFR § 385.212 & 385.213 (2013), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM¹ (“Market Monitor”), answers and moves for leave to answer the reply brief filed in this proceeding on May 6, 2014, by the Financial Marketers (“Financial Marketers”). The Market Monitor responds herein to new arguments raised in the Financial Marketers’ brief. Specifically, the Market Monitor explains that the Market Monitor’s initial brief constitutes evidence on the impact of recoupment of refunds on markets, confirms the applicability of the legal precedent for recoupment and explains why the Financial Marketers’ assertions of discrimination have no merit.

¹ Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”).

I. ARGUMENT

A. The Market Monitor's Pleading, Which Includes Dr. Joseph Bowring in the Signature Block, Qualifies as Expert Testimony Without Need for a Sworn Affidavit.

The Financial Marketers argue in their reply brief that the only evidence submitted on the issue of broader market impacts was Dr. William Hogan's expert testimony.² The Market Monitor's pleading also constitutes evidence because it is filed by the Independent Market Monitor for PJM, acting in its official capacity.³

B. Ample Precedent Exists Supporting Recoupment of Refunds.

The Financial Marketers argue that "no existing precedent supports the recoupment of a refund."⁴ All contributing parties disagree.⁵ Recoupment is a tool used to rectify previous errors and flawed distributions. The Financial Marketers argue that they cannot find precedent involving the recoupment of a post-distribution refund.⁶ The Financial

² Financial Marketers at 5–6.

³ See OATT Attachment M; see also *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), (The Commission determined that RTOs would be required to perform a market monitoring function.); 89 FERC ¶ 61,285 (1999); *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092, (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Circ. 2001); see also 81 FERC ¶ 61,257(1997) (Finding that the PJM ISO had satisfied the requirement to have a market monitoring function.); *Order Approving Uncontested Settlement & Denying Rehearing*, 122 FERC ¶ 61,257, (2008); *Order Accepting Tariff Revisions*, 144 FERC ¶ 61,238, (2013).

⁴ Financial Marketers at 18.

⁵ See e.g., *Reply Brief of American Municipal Power, Inc.*, Docket No. EL08-14-010 (May 7, 2014), at 2–3 (stating "[...] Financial Marketers proceed from a flawed premise- viz., that recoupment is not a remedy already at the Commission's disposal."); *Reply Brief of PJM Interconnection, LLC Regarding Recoupment of Refunds*, Docket No. EL08-14-010 (May 6, 2014) at 2 (stating "[t]he accuracy of this unqualified claim by Financial Marketers is questionable at best."); *Reply Brief on Remand of Madison Gas & Electric Company and WPPI Energy*, Docket No. EL08-14-010 (May 7, 2014) at 6 (stating "Financial Marketers provide no basis for their claim that the Commission has established a new "policy," because there is no such basis. The claim is hollow.").

⁶ Financial Marketers at 18.

Marketers attempt to dismiss precedent cited by other parties because the specific recoupment mechanism “did not involve an initial refund decision followed by a Commission change of heart.”⁷ However, the Financial Marketers ignore that these cases have one thing in common: Recoupment is a permissible and frequently utilized remedy with substantial precedent.

C. No Evidence of Discrimination Exists.

The Financial Marketers exceed the scope of the proceeding by reintroducing already decided issues. They suggest that “to exercise recoupment only against virtual traders would not only be unduly discriminatory, but the essence of arbitrary and capricious conduct,”⁸ because it would “re-establish [...] illegal and unduly discriminatory windfalls to a sub-set of other market participants.”⁹ They assume that the decision to recoup is based on “[a] view of the likeability of the class from which a refund is recouped.”¹⁰ No party has referred to, or offered proof of, the relative likeability of different classes of Market Participants. However, the Financial Marketers contradict their argument alleging that recoupment singles them out by correctly observing that the recoupment of a distributed refund “could happen to any market participant, not just financial marketers [...] [t]he load serving entities could be next.”¹¹ The very fact that the Commission has the power to change course after an erroneous decision, in any case, against any type of party, refutes the Financial Marketers’ allegation of discrimination.

⁷ *Id.* at 17, nn.38, 40.

⁸ *Id.* at 9.

⁹ *Id.* at 5.

¹⁰ *Id.* at 7.

¹¹ *Id.* at 8.

II. CONCLUSION

The Market Monitor respectfully requests that the Commission consider the Market Monitor's comments set forth above in formulating its response to the Remand Order.

Respectfully submitted,

Maeve C. Tibbetts /s/

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Dated: May 28, 2014

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 May, 2014.

Maeve C. Tibbetts /s/

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