

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

PJM Interconnection, L.L.C.)
) Docket No. ER16-561-000
)

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

Pursuant to Rule 212 and 213 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM² (“Market Monitor”), submits this answer to, and moves for leave to answer, the answer submitted on January 8, 2016, by the Talen Companies, PJM Power Providers Group and the Essential Power PJM Companies (“Suppliers”).

On December 18, 2015, PJM Interconnection, L.L.C. (“PJM”) proposed a tariff mechanism for funding the Consumer Advocates of PJM States, Inc. (“CAPS”), a non-profit organization formed to coordinate the participation of State consumer advocate offices in the PJM stakeholder process (“CAPS Filing”).

Suppliers raise various legal arguments opposing the CAPS Filing. None of those arguments address an essential underlying purpose and justification for the CAPS Filing: bolstering and protecting the independence requirement of PJM as an RTO. The current stakeholder process requires balanced representation of stakeholder interests to ensure that

¹ 18 CFR §§ 385.212 & 385.213 (2015).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”), the PJM Operating Agreement (“OA”) or the PJM Reliability Assurance Agreement (“RAA”).

PJM acts “independent of control by any market participant or class of participants.”³ PJM acted properly to submit the CAPS Filing, and it should be approved.

I. ANSWER

A. The Commission Has Jurisdiction Over Matters Related to RTO Status.

Suppliers argue (at 8–14) that the Commission lacks jurisdiction to approve the CAPS Filing. The Commission has jurisdiction over proposals from RTOs intended to bolster and protect RTO status.⁴

The CAPS Filing bolsters and protects PJM’s status as a Regional Transmission Organization (“RTO”).⁵ The CAPS Filing will enhance PJM’s independence, which PJM identifies as the bedrock principle of RTO status.⁶ PJM explains (at 3): “PJM believes meaningful participation of the State Consumer Advocates provides useful information to PJM and the PJM stakeholders on the interests and concerns of consumers and contributes to a more effective stakeholder process given they have been designed [sic] by their state legislatures to represent the important but disaggregated interests of tens of millions of end-use energy consumers in the fourteen jurisdictions in PJM’s footprint.”

³ See CAPS Filing (at 2): “Order No. 2000 underscores ... that with respect to the stakeholder processes of RTOs, “the importance of a decision making process that is independent of control by any market participant or class of participants,” citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 *mimeo* at 193–194 (1999) (“Order No. 2000”), *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. Cir. 2001).

⁴ See *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 404 (D.C. Cir. 2004) (“The Commission, in Order No. 888 and other rulings made pursuant thereto, has defined ISOs according to the terms it wishes. FERC has the authority not to accept something which it does not deem an ISO.”).

⁵ See *id.*

⁶ See *id.* (“Order No. 2000 underscores that “the principle of independence is the bedrock upon which the ISO must be built”), citing Order No. 2000 *mimeo* at 193–194.

The stakeholder process has a critical role in developing and approving market design proposals that PJM submits to the Commission. Market design proposals filed by PJM under Section 205 of the Federal Power Act are accorded deference when reviewed by the Commission. The market design is relied upon to produce efficient and lawful rates. PJM also submits filings to procure services on behalf of load, such as black start service, reactive power service, and reliability-must-run service, and the stakeholder process also has influence over the rates and other terms and conditions for such services. A balanced stakeholder process is necessary for PJM to develop balanced rule proposals.

RTOs are creatures of the Commission, and the Commission has the jurisdiction to determine the rates charged by RTOs so that RTOs can achieve the requirements and goals assigned to RTOs. Consequently, the cases relied upon by Suppliers have no relevance to the Commission's jurisdiction in this matter. No case cited by Suppliers limits the ability of the Commission to accept a filing from PJM seeking to bolster its independence.

B. Suppliers Mischaracterizes the Role of CAPS Members and All PJM Members in the Stakeholder Process.

Suppliers complain (at 14–23) that funding CAPS requires certain Transmission Customers to fund speech with which they may not agree. Suppliers' complaints about the mechanics of the provision of CAPS funding mischaracterize the role of CAPS members in the PJM stakeholder process.

PJM is an RTO taking the form of a Delaware limited liability company (LLC). The members of the LLC comprise a key component of PJM's governance structure. Rather than attempt to meet the independence requirement for RTOs by including neutral and objective members, PJM attempts to ensure independence requirement by hosting a consensus building process among members with different and often conflicting interests. Reliance on a consensus building process to protect independence is not justified unless there is balanced representation within that process.

Funding CAPS is a reasonable attempt to establish an appropriate balance. The issue is not about who funds what speech. The issue is how to create a stakeholder process

consistent with PJM's independence. Suppliers, Transmission Customers and CAPS are voting members of PJM. To the extent that LLC members manage an LLC, such as voting on the LLC's regulatory filings, LLC members have a fiduciary duty to the LLC.⁷ Specifically, LLC members have a duty of care, which means that they must act in good faith and promote the interests of the LLC. PJM's interests are defined in its Operating Agreement, and they include "the creation and operation of a robust, competitive, and non-discriminatory power market in the PJM Region."⁸ All LLC members have a common duty to advocate PJM's interests in good faith when they participate in the stakeholder process.

CAPS are not the only members whose participation is funded by ratepayers. Many other members have regulated tariffs and use revenues obtained under those tariffs to finance their activities as members of PJM. Those members may use revenues obtained under those rates to advocate views in the stakeholder process with which their customers may not agree. Allowing FERC-approved rates to support public utility members' participation in the stakeholder process is an accepted practice. There is no reason to single out CAPS for exclusion.

PJM's proposed Schedule 9-CAPS states: "The CAPS charge, under this Schedule 9-CAPS, shall be assessed on all MWhs of energy (including losses) to load in the PJM Region." The approach adopted by PJM in Schedule 9-CAPS is reasonable and should be accepted.

C. Funding Caps is Not Discriminatory or Otherwise Inconsistent with Ratemaking Principles.

Suppliers claim (at 23) that "State Consumer Advocate groups should not be given preferential treatment through a Tariff funding mechanism when other stakeholder groups

⁷ See *Feeley v. NHAOCG, LLC*, 62 A.3d 649, 661 (Del. Ch. 2012) (The managing member of an LLC "is vested with discretionary power to manage the business of the LLC" and "easily fits the definition of a fiduciary."), citing *Auriga Capital Corp. v. Gatz Props., LLC*, 40 A.3d 839, 850-51 (Del. Ch. 2012).

⁸ OA § 7.7(i).

are not similarly funded.” Others, including Suppliers, do fund their participation in the PJM stakeholder process through regulated rates. Unlike CAPS members, those entities do not purport to represent the interests of load, those who ultimately pay the rate.

Suppliers claim (at 25) that nothing distinguishes CAPS from other stakeholders. CAPS members are the only entities with an exclusive obligation to represent the general interests of end use customers. End use customers constitute an important stakeholder constituency in the organized wholesale markets. End use customers are the only entities logically in a position to bargain with Suppliers over costs. They are the only representatives exclusively adopting the market perspective of demand. Because CAPS members already represent end use customers in state matters, it makes sense to take advantage of existing institutions to represent load in PJM. PJM is actually leveraging costs already incurred by the states, reducing the overall cost of representing retail customers.

Suppliers object (at 25), “The burden of funding such activities should not be placed on a subset of entities in the private sector.” Proposed Schedule 9–CAPS is levied on all load served by Network Integration and Point-to-Point Transmission Service customers. Such pass through “to all MWhs of energy ... to load” is the explicit intent of proposed Schedule 9–CAPS. It is not clear whether Suppliers objection is to load paying for CAPS as required under the proposed tariff. Suppliers have not asserted that they will pay for CAPS as suppliers. They will not.

Suppliers state (at 25) “CAPS’ members should seek [funding] within their respective states.” Suppliers also argue (at 28–30), “It is inconsistent with cost causation principles to require Transmission Customers that serve load to pay the costs of State Consumer Advocates that are representing the interests of retail customers in a number of different states.” CAPS members do receive full funding from their states for state related activities. CAPS sole purpose is to facilitate the participation of CAPS’ members in a federally regulated RTO. Funding participation in a FERC jurisdictional arrangement through a FERC approved rate is appropriate.

II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to answers or protests unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.⁹ In this answer, the Market Monitor provides the Commission with information useful to the Commission's decision-making process and which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

III. CONCLUSION

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

Respectfully submitted,



Jeffrey W. Mayes

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
(610) 271-8051

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
(610) 271-8053

⁹ See, e.g., *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"); *California Independent System Operator Corporation*, 110 FERC ¶ 61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process); *N.Y. Independent System Operator, Inc.*, 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

joseph.bowring@monitoringanalytics.com

jeffrey.mayes@monitoringanalytics.com

Dated: January 29, 2016

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 29th day of January, 2016.



Jeffrey W. Mayes

General Counsel

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Valley Forge Corporate Center

Eagleville, Pennsylvania 19403

(610) 271-8053

jeffrey.mayes@monitoringanalytics.com