

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

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|-----------------------------|---|------------------------|
| Potomac Economics, Ltd. |) | |
| |) | Docket No. EL17-62-000 |
| v. |) | |
| |) | |
| PJM Interconnection, L.L.C. |) | |
| |) | |

ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 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 in response to the motion of PJM Interconnection, L.L.C. (“PJM”) filed May 8, 2017, to dismiss (“May 8th Motion”) the complaint filed by Potomac Economics Ltd. in relation to “Potomac Economics’ core mission as a market monitor under Order No. 719,” on April 5, 2017 (“April 5th Complaint”).³ The April 5th Complaint should be denied for its lack of merit, as the Market Monitor argues in its comments filed in this proceeding May 31, 2017. The arguments raised by PJM in support of its motion to dismiss the April 5th Complaint also have no merit. The motion to dismiss should be denied.

¹ 18 CFR § 385.211 (2016).

² PJM Interconnection, L.L.C. (“PJM”). 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 Reliability Assurance Agreement (“RAA”).

³ April 5th Complaint at 47.

The principal argument offered by PJM in support of the May 8th Motion states (at 16): “Filing a complaint under FPA section 206 in an attempt to effectuate its preferred market design is ... contrary to the limited role to monitor, observe, advise, refer and report assigned to market monitors by Order No. 719.” PJM is incorrect. Filing a complaint is not the equivalent of effectuating a market rule. Neither a market monitoring unit, nor any other complainant, effectuates a rule by filing a complaint. Complainants must prove the existing rules are unjust, unreasonable and/or unduly discriminatory. Complainants may advocate for desired changes, but the Commission determines whether and how it will modify the market rules, and the Commission is not required to provide relief in the specific form requested by the complainant. Once the Commission has defined the rules and approved tariff language that defines the detailed application of the rules, the RTO/ISO effectuates the rules and the defined market design.

Under PJM’s legal theory, any complainant who prevails in a complaint that requires rule changes is “effectuating” PJM’s market design. PJM’s theory is flawed. Establishing the market rules is not the equivalent of effectuating them. Only PJM effectuates its market design.

After the Commission requires changes to market rules, those changes typically require compliance filings by the Regional Transmission Organization/Independent System Operators (RTO/ISO). Even then, the changes are not effectuated until the RTO/ISO actually implements them. Potomac Economics does not seek through the April 5th Complaint or otherwise to effectuate changes to the PJM market rules.

PJM also argues (at 17–18) that the ability to file a complaint against PJM depends upon an explicit grant of such authority in a tariff. The ability of persons to file complaints originates in the Federal Power Act and not the tariff.⁴

⁴ See 16 U.S.C. §§ 824e & 825e (“any person ... may apply to the Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the

PJM argues (at 18–19) that Potomac Economics lacks standing to file a complaint alleging Potomac Economics has not been harmed and its concerns are theoretical. Potomac Economics experiences harm and has standing to file complaints about market design issues for the same reason PJM experiences harm and has standing to file complaints about such issues. Neither PJM nor Potomac Economics experience financial harm; both experience harm related to their institutional mission and purpose. The Supreme Court has recognized such harm as a valid basis for standing.⁵

The May 8th Motion also argues (at 14–15) that other pending proceedings at the Commission related to pseudo ties and negotiations between PJM and MISO that pertain in part to pseudo ties are reasons to dismiss the April 5th Complaint. The existence of other proceedings or discussions that bear upon a topic is not grounds to request dismissal of a complaint. Such proceedings or discussions would not constitute grounds for dismissal even if the relief requested were within the scope of such proceedings or discussions. PJM, however, has not shown that the relief requested in the April 5th Complaint is potentially addressed elsewhere.

The actual problems with the April 5th Complaint are that it fails to show that PJM’s pseudo tie requirement constitutes a flaw in the PJM market design, fails to identify a valid harm to third parties caused by the requirement and offers a proposed solution that is

Commission to such ... public utility, who shall be called upon to satisfy the complaint or to answer the same”.); *see also*, Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM, Docket No. ER16-372-004 (March 10, 2017); Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM, Docket No. ER16-372-004 (April 21, 2017).

⁵ *See* Alfred L. Snapp & Son v. P.R., 458 U.S. 592, 611–612 (1982) (“A private organization may bring suit to vindicate its own concrete interest in performing those activities for which it was formed,” citing, *e.g.*, Havens Realty Corp. v. Coleman, 455 U.S. 363, 378–379 (1982); Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 263 (1977); NAACP v. Button, 371 U.S. 415, 428 (1963).).

incompatible with the PJM market design. The problem is not who filed it. PJM's motion to dismiss should be denied.

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

Respectfully submitted,



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Dated: June 7, 2017

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 7th day of June, 2017.



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