

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

PJM Interconnection, L.L.C.)	
)	Docket No. ER19-2915-000, -001
)	

**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,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”), submits this answer to the comments by Exelon and Dominion and the protest submitted by Public Service Electric and Gas Company, both submitted on February 12, 2020.

On September 30, 2019, PJM filed revisions to its competitive proposal window process used to develop the PJM Regional Transmission Expansion Plan (“RTEP”) initiating this proceeding.² The revisions are designed to ensure that PJM conducts a comparative review and analysis of any cost commitment voluntarily included as part of a proposal submitted in a competitive window.

Exelon, Dominion and PSEG create confusion in the record concerning the nature of binding cost commitments that requires clear resolution. Such confusion can be eliminated to the extent that any order approving PJM’s cost commitment proposal clearly states that participants voluntarily including cost commitments must be strictly held to such commitments without regard to Section 205 filing rights or inapplicable precedent. The

¹ 18 CFR §§ 385.212 & 385.213 (2019).

² See OA Schedule 6 § 1.5.8.

Market Monitor agrees with Dominion and Exelon (at 3) that the value of cost commitments “is contingent on any exclusions and the potential for future modification.” The Market Monitor disagrees with the implied argument that the value of cost commitments is not permanent and cannot be protected because Section 205 filing rights allow subsequent modifications of cost commitments. An order approving PJM’s proposal can provide the necessary protection and advance the goals of competitive transmission development by clarifying that voluntary cost commitments are irrevocable under the just and reasonable standard.

I. ANSWER

Exelon and Dominion correctly indicate (at 6–7) that the cost commitment rules filed by PJM do not require a participant in the process to commit to a cap of some or all of their costs included in a proposal. The inclusion of a cost commitment in a proposal is voluntary. A cost commitment, when included, is an essential part of a competitive offer which shifts risks from customers to investors.

Cost commitments can and should influence PJM’s choice of projects. PJM must take cost commitments into account in selecting among projects. PJM may select, on the basis of economics, a higher estimated cost project over a lower estimated cost project if the higher cost project includes cost commitments and the lower cost project does not. Such a selection can be economic when it appropriately accounts for risks of cost overruns in the project lacking cost commitments.

Because cost commitments can influence the selection of projects based on the participant’s assumption of risk, the participant gives up its ability to subsequently change its rate through a Section 205 filing under the just and reasonable standard to the extent that the rate or components of the rate are capped.

Exelon and Dominion create confusion by framing their response as contrary to the position on cost commitment and Section 205 rights stated by LS Power et al. and the precedent relied upon by LS Power et al.³ LS Power et al. do not argue that all participants must make cost commitments. LS Power et al. argue that participants choosing to include cost commitments in their proposals must be held to such commitments, notwithstanding Section 205 filing rights. LSP Power et al. further explain that their position is consistent with *Atlantic City Electric v. FERC*, citing the Court’s recognition that “the public utility, ‘like the seller of an unregulated commodity, has the right... to change its rates... [at] will, *unless it has undertaken by contract not to do so.*” [emphasis in original (LS Power et al.)].⁴

PSEG mischaracterizes cost commitment proposals (at 2–3) as “hypothetical.” The suggestion is that PJM is setting the rate, and that the concerns about hypothetical rates raised in the Supreme Court’s *Keogh v. Chi. & Nw. Ry. Co.* decision apply.⁵ The basis for cost commitments is the voluntary commitment of the participant to a cap. The cost commitment proposal is analogous to an offer in the wholesale power markets. An order approving PJM cost containment should clarify that a cost commitment included in a project proposal is a binding contractual commitment upon acceptance and not “hypothetical” as that term is used in *Keogh*.

It would be unjust and unreasonable, and unduly discriminatory, to permit a participant with a project selected in whole or in part on the basis of a cost commitment and an assumption of risk to subsequently attempt to include a higher level of costs in rates. Any approach that would allow abrogation of the cost commitment would defeat the goals

³ See Exelon and Dominion at 6 & n.21.

⁴ See Motion for Leave to Answer and Answer of LSP Transmission Holdings II, LLC, the District of Columbia Office of People’s Counsel, and West Virginia Consumer Advocate Division, ER19-2915-000 (Nov. 13, 2019) at 11–15, citing *Atlantic City Electric Company, et al. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002).

⁵ PSEG at 3, citing 260 U.S. 156 (1922).

of cost containment and the enhancement of competitive transmission development that results from cost containment. It is important that in approving PJM's cost containment proposal, any potential confusion be removed with an explicit confirmation that participants voluntarily including cost commitments will be held to such commitments without regard to Section 205 filing rights or inapplicable precedent.

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.⁶ 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.

⁶ 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).

III. CONCLUSION

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

Respectfully submitted,



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Dated: February 28, 2020

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 February, 2020.



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