

allow this withholding behavior without consequences. The April 1st Filing would permit the exercise of market power and would create an arbitrary, artificial and discriminatory economic advantage for the resources that have failed to invest in start capability compared to the resources that have made those investments.

I. ANSWER

A. Market Power Mitigation Should Be Addressed in Clear Rules.

Clear enforceable rules are the only way to ensure required behavior in organized wholesale power markets. After the fact enforcement cannot work if the rules are not clear. The Commission cannot enforce requirements if there are no clear rules that establish the requirements. The Commission has clearly recognized in prior proceedings that the rule based approach is preferable to the enforcement approach. The enforcement approach is inefficient, nontransparent, and of limited value as a deterrent to market manipulation.³ The Commission has adopted a rule based approach to prevent the exercise of market power in RTO markets and relies on those rules to ensure the competitiveness of market based rates.⁴

The April 27th Answer (at 7) cites the Commission's 2020 Report on Enforcement, noting the extent of past civil penalties and settlements. The April 27th Answer entirely ignores the much longer list of behaviors, not referenced in the Report, that were directly deterred or prevented by clear rules. The April 27th Answer also ignores the fact that the Report provides strong evidence that referrals without underlying clear rules are not an effective deterrent and are not as effective as clear rules. In fact, all the violations that

³ See *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,038 at PP 32, 33, 80 (2017).

⁴ See *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,282 at P 63 (2016); *Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets*, Order No. 861, 168 FERC ¶ 61,040 (2019), *order on reh'g*, Order No. 861-A, 155 FERC ¶ 61,188 (2016).

reached a settlement in fiscal year 2020 involved a tariff violation.⁵ All six investigations opened in 2020 involved a potential tariff violation.⁶ Only three of the 13 referrals received in 2020 led to investigations.⁷ These data show that clear tariff rules support the Office of Enforcement's work. It is difficult or impossible to enforce tariff rules that are unclear, permit bad behavior or do not exist. Tariff rules defining and prohibiting misconduct in the markets are the first line of defense for RTOs and the Commission to protect the integrity of the markets.

The April 27th Answer's approach (at 4–6) cannot and will not work. Requiring an explanation from a generation owner does not change behavior. Documentation is not the issue. Simply threatening or sending referrals to the Office of Enforcement is ineffectual by design. The Office of Enforcement cannot act on referrals in the absence of clear rules. Even if an enforcement action were taken after an investigation, the enforcement action approach is inefficient compared to the rule based approach to market power mitigation. An enforcement approach cannot undo the harm to the market that results from the exercise of market power, including noncompetitively high prices.

The April 27th Answer and the Market Monitor's Protest agree that unstaffed generators use RTVs to increase notification times. The result is that these generators avoid commitment and dispatch based on the shorter notification time parameters that are required to be submitted by capacity resources. This constitutes misuse of RTVs. Only a rule based consequence that is properly enforced for resources that do not adhere to their parameter limits can resolve the issue. But the April 27th Answer asserts, without support,

⁵ FERC "2020 Report on Enforcement," Docket No. AD07-13-014 (November 19, 2020) at 17. <<https://www.ferc.gov/media/2020-annual-report-enforcement>>.

⁶ *Id.* at 31.

⁷ *Id.* at 41.

that referrals are a substitute for clear rules. Clear rules and enforcement action are not substitutes. They are complements.

As the April 27th filing (at 3) recognizes, the Market Monitor monitors the PJM market for market violations, including those involving the use of RTVs.⁸ But monitoring and flagging noncompetitive behavior have little impact if the rules permit that behavior. The April 1st Filing would directly undermine any finding that the misuse of an RTV constitutes a market violation.⁹ The April 1st Filing would explicitly permit behavior that is currently a tariff violation. Right now, the use of RTVs to avoid unit specific parameter limits on the parameter limited schedules is a violation of OA Schedule 1, Section 6.6(c) that states:¹⁰

These unit-specific values shall apply for the generating unit unless it is operating pursuant to an exception from those values under subsection (i) hereof due to operational limitations that prevent the unit from meeting the minimum parameters.

The April 1st Filing would make it effectively impossible for the Market Monitor and the Commission to prove that withholding using inflexible parameters in RTVs is a market violation.

The Market Monitor also makes recommendations to improve the market rules to make them more consistent with competitive outcomes. The Market Monitor recommends that there be a clear market rule prohibiting or defining a penalty for the use of RTVs to avoid the obligation of capacity resources to provide flexibility to the markets.

⁸ 18 CFR § 35.28(g)(3)(ii)(C).

⁹ 18 CFR § 35.28(b)(8) (“A Market Violation is a violation of a tariff, Commission order, rule or regulation, market manipulation, or inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies.”).

¹⁰ Section 6.6(i) describes the parameter limit exception process.

B. PJM's Current Practice and PJM's Proposal Encourage the Use of RTVs for Unstaffed Units.

The April 27th Answer's claim to discourage misuse of RTVs is not supported by the proposed rules in the April 1st Filing. The April 1st Filing would permit market sellers to increase their notification times using RTVs when their units are not staffed, facilitating rather than discouraging misuse of RTVs. The April 1st Filing codifies and legitimizes this practice rather than defining it as a tariff violation with defined consequences.

PJM argues (at 5) that market sellers will be discouraged from using RTVs on a daily basis because they have to defend that they have not engaged in "economic withholding or failing to use good utility practice." However, the April 1st Filing does not include any provisions that define economic withholding or failure to use good utility practice. Instead, the April 27th Answer defends the withholding behavior of market sellers that have failed to invest in remote start and failed to provide for onsite staff by arguing that these market sellers have legitimate reasons to violate their unit specific parameters. The April 27th Answer asserts that extending the notification time of these resources by an undefined "reasonable" amount is not economic withholding. Using RTVs to submit inflexible parameters and to avoid commitment is physical withholding. (It is not economic withholding because there is no offer price at which the resource will operate under its unit specific parameter limits.) The April 27th Answer also fails to address the fact that PJM's approach would create an arbitrary, artificial and discriminatory economic advantage for the resources that have failed to invest in remote start capability compared to the resources that have made those investments.

The April 27th Answer states (at 5) that "PJM can still dispatch those resources based on the increased notification time." The question is not whether PJM dispatchers have the authority to commit a unit with a longer notification time if they make an out of market decision to do so. The question is how the market (the market software) evaluates the submitted offer parameters. If MWh are needed within ten minutes, the PJM dispatchers will take the resources that fulfill their obligations as capacity resources and not take the

resources with longer notification start times that violate the capacity market rules. The resources violating the rules will receive an arbitrary, artificial and discriminatory advantage in dispatch, allowing them, for example, to receive capacity payments without operating. In real time operations, the tools that help dispatchers commit units in the near term do not even consider units with long notification times. PJM dispatchers' software only presents units for potential commitment that can start within two hours.¹¹ In other words, the units that extend their start plus notification time beyond two hours will not be committed by the markets software. That is physical withholding.

These cases of physical withholding are the problem and the asserted reason that PJM raised the issue with stakeholders.¹² But the April 1st Filing does not solve the problem; it codifies it. The April 1st Filing creates no consequences for these units, which are receiving capacity payments and using RTVs to avoid forced outages when they are not available in real time.

In addition, the April 1st Filing would allow these resources to avoid market power mitigation. PJM uses parameter limited schedules when market sellers fail the TPS test. RTVs allow units to override their unit specific parameter limits in their offers and avoid the use of competitive parameters even when they have market power. The April 1st Filing creates no consequences for these units when they use RTVs to avoid market power mitigation when they fail the TPS test.

C. Notification times have a direct impact on market outcomes.

PJM argues (at 6) that the data provided by the Market Monitor does not demonstrate that market sellers manipulated market outcomes. PJM does not support its

¹¹ See PJM Filing, Docket No. EL19-58-000, (March 29, 2019), Attachment E (Affidavit of Christopher Pulong on Behalf of PJM Interconnection, L.L.C.) at 8.

¹² See Review of Real Time Values Market Rules, PJM Problem Statement presented to the Members Committee (December 5, 2019), which can be accessed at: <<https://www.pjm.com/-/media/committees-groups/committees/mrc/20191205/20191205-item-06-real-time-values-problem-statement.ashx>>.

view. The Market Monitor has demonstrated how RTVs are currently used to increase notification times even with rules in place that do not allow it. PJM's proposed rules that explicitly allow the use of RTVs without consequences on most days, are very likely to lead to more widespread use and a bigger issue. If the April 1st Filing is approved, it will significantly weaken the market power protections in Section 6.6 of Schedule 1 of the OA.

D. Capacity Resources Must Be Flexible.

PJM states that it supports RTVs because PJM wants dispatchers to have the most accurate information at their disposal. The April 1st Filing would not improve the information available to dispatchers. The Market Monitor agrees that dispatchers must be able to manage and control the grid using the most accurate information. The Commission's market behavior rules already explicitly require market sellers to provide accurate information to the RTO.¹³

The April 1st Filing would weaken the requirement for capacity resources to be flexible. Contrary to PJM's argument, there is no tradeoff between requiring flexible parameters as the tariff specifies, and requiring that failures to meet the required parameters be communicated to the RTOs. PJM dispatchers should have accurate parameter data, and this data should reflect generators' unit specific limits or a tariff defined exception to their PLS schedules. Both these requirements can and should be enforced.

The issue is ensuring that Capacity Resources meet their obligations and do not exercise market power. Capacity Resources are required to offer under defined operating parameter limits in their parameter limited schedules. This requirement is clear in OA

¹³ See 18 CFR § 35.41(b) ("A Seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences.").

Section 6.6. That is an obligation that capacity resources take on when clearing the capacity market. For all units, this means offering as flexibly as they can or making operational improvements to achieve that. The April 1st Filing will allow market sellers to avoid this obligation in the energy market.

PJM incorrectly states (at 3) that “the proposed Real Time Value rules make no changes to the existing Capacity Performance rules.” The proposed RTV rules would clearly weaken the requirement of capacity performance resources to submit flexible parameters in energy market offers. PJM is incorrectly interpreting Capacity Performance rules to only include the performance assessment during certain emergency actions. That is inconsistent with PJM’s filing in the capacity performance proceeding that recognized the interactions between capacity market rules and energy market rules.¹⁴ That is also inconsistent with the tight integration of the energy market and capacity market in PJM. The capacity market exists only to ensure that the energy market can work. PJM submitted the tariff updates that created the obligation of capacity performance resources to comply with unit specific parameter limits in the energy market. The Commission issued orders jointly for both the capacity market updates and the energy market updates. By modifying the rules now, PJM would weaken the requirements for reliability and flexibility that were and continue to be the goal of the Capacity Performance reforms.

E. Stakeholder Support on Market Power Rules Is Irrelevant.

The April 27th Answer (at 8) points out that that the stakeholders rejected other proposals regarding the use of RTVs. Stakeholder preferences should not define market power protections. It will always be in the interests of some stakeholders to weaken the market power rules in the tariff. PJM has an independent obligation to ensure competitive market outcomes. Opposition from some stakeholders is not a reason to not support clear

¹⁴ See Docket Nos ER15-623-000 and EL15-29-000.

rules that would strengthen flexibility incentives in the energy market, improve the reliable operation of the PJM system, and prevent the exercise of market power.

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.¹⁵ 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.

¹⁵ 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: May 12, 2021

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 12th day of May, 2021.



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