

modified sub nom. Atl. City Elec. Co. v. FERC, 295 F.3d 1 (D.C. Cir. 2002), and then as an RTO, *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345 (2002).

As a condition for approval as an ISO and as an RTO, PJM was required to have an independent market monitoring function. 81 FERC ¶ 61,257, 62,282; 101 FERC ¶ 61,345, 62,444, citing *PJM Interconnection, L.L.C., et al.*, 96 FERC ¶ 61,061, 61,239 (2001). The Market Monitor is charged to “objectively monitor the competitiveness of PJM Markets, investigate violations of FERC or PJM Market Rules, recommend changes to PJM Market Rules, prepare reports for the Authorized Government Agencies and take such other actions as are specified in this Plan.” OATT Attachment M § IV.A. The Market Monitor is solely responsible for the market monitoring function for PJM and has been since the inception of PJM markets in 1999. In 2008, the Market Monitor became a fully separate organization, and the Market Monitor has continued since that time to perform the market monitoring function pursuant to a Market Monitoring Services Agreement with PJM. *Allegheny Elec. Coop., et al. v. PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,257, 62,486–62,487 (2008). The Market Monitor is responsible for implementing the PJM Market Monitoring Plan, which is included in the Tariff as Attachment M and Attachment M–Appendix.

Petitioners seek review of orders establishing a just and reasonable market protection rule known as the Financial Transmission Right (“FTR”) Forfeiture Rule (“FTR Forfeiture Rule”).¹ ISO/RTO markets such as those operated by PJM use FTRs to return congestion revenues that result from locational marginal pricing rules used in such markets to those that paid them. Virtual trades can be used to manipulate the level of congestion payments and the value of FTRs. Schemes involving manipulating FTR values through

¹ See *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,079 (2022); *PJM Interconnection, L.L.C.*, 179 FERC ¶ 62,008 (2022); *PJM Interconnection, L.L.C.*, 179 FERC ¶ 61,010 (2022); PJM Operating Agreement Schedule 1 § 5.2.1(b).

energy market trades have been a persistent problem in ISO/RTO markets.² The FTR Forfeiture Rule is intended to limit the extent to which market participants can use virtual trading to manipulate the value of FTRs.

By order issued January 19, 2017, the Commission determined that the FTR Forfeiture Rule is just and reasonable and “...serves to deter such manipulation” related to virtual transaction cross product manipulation.³

The point of the FTR Forfeiture Rule is to establish an objective rule that prevents manipulation of the day-ahead energy market to advantage FTR values while avoiding an inefficient and costly FTR specific market power mitigation process.

The Market Monitor’s responsibilities include a specifically defined role in the administration of the FTR Forfeiture Rule.⁴ The Market Monitor was the principal proponent of the version of the FTR Forfeiture Rule in the proceedings resulting in the orders subject to this appeal. To whatever extent the FTR Forfeiture does not operate to prevent virtual trades from affecting FTR values to the benefit of the trader, the Market Monitor must investigate potential market manipulation and, where there is sufficient credible evidence of a violation, refer the matter to the FERC Office of Enforcement. *See*

² *See, e.g., MISO Virtual and FTR Trading*, 146 FERC ¶ 61,072 (2014); *Deutsche Bank Energy Trading, LLC*, 142 FERC ¶ 61,056 (2013); *see also Enron Power Marketing, Inc., et al.*, 119 FERC ¶ 63,013 at P 92 (2007) (describing Enron’s “load shift” FTR manipulation scheme).

³ *See PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,038 at P 33.

⁴ *See* Tariff Attachment M–Appendix § VI (“The Market Monitoring Unit shall calculate Transmission Congestion Credits as required under Operating Agreement, Schedule 1, section 5.2.1(b) and Tariff, Attachment K–Appendix, section 5.2.1(b), including the determination of the identity of the Effective FTR Holder and an evaluation of the overall benefits accrued by an entity or affiliated entities trading in FTRs and Virtual Transactions in the Day-ahead Energy Market, and provide such calculations to the Office of the Interconnection. Nothing in this section shall preclude the Market Monitoring Unit from action to recover inappropriate benefits from the subject activity if the amount forfeited is less than the benefit derived by the Effective FTR Holder. If the Office of the Interconnection imposes a forfeiture of the Transmission Congestion Credit in an amount that the Market Monitoring Unit disagrees with, then it may exercise its powers to inform Commission staff of its concerns and request an adjustment.”).

OATT Attachment M § IV.I.1. The FTR Forfeiture Rule operates automatically. In contrast, FERC must prove market manipulation, including intent, in each matter referred to it that it seeks to enforce. A weak or ineffective FTR Forfeiture Rule directly harms the ability of the Market Monitor to carry out its market monitoring functions and undermines the competitiveness of the PJM markets.

The Market Monitor has a direct and substantial interest in this proceeding. Such interest cannot be adequately represented by any other party.

CONCLUSION

The Market Monitor respectfully requests that the court grant its motion for leave to intervene in this proceeding.

Respectfully submitted,



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DISCLOSURE STATEMENT

Monitoring Analytics, LLC has no parent corporation. Because Monitoring Analytics, LLC does not issue stock, no corporation can own ten percent or more of its stock.

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Appellate procedure, I hereby certify that I have this 10th day of June, 2022, served the foregoing Motion of the Independent Market Monitor for PJM for Leave to Intervene and Corporate Disclosure Statement via the CM/ECF system.



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