

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

PJM Interconnection, L.L.C.)	Docket Nos. ER21-1635-000
)	EL21-91-003
)	
)	

ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM

To: The Honorable Judge Andrew Satten
Chief Administrative Law Judge

The Honorable Judge Joel deJesus
Presiding Administrative Law Judge

Pursuant to Rules 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”),² submits this answer to the motion submitted by the Settling Parties on April 29, 2024 (“Motion”). In the Motion, the Settling Parties request that the Chief Administrative Law Judge appoint a Settlement Judge and request that the answer period to the Motion be shortened to five business days. By order issued May 1, 2024, the Presiding Judge denied the motion for a shortened answer period. The motion to reinstitute settlement judge proceedings remains pending.

The Market Monitor opposes the Motion. Good cause does not exist to grant the Motion. Good cause exists to deny the Motion. The Motion should be denied.

¹ 18 CFR § 385.213 (2023).

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”).

I. ANSWER

The Market Monitor opposes the appointment of a Settlement Judge in this proceeding.

The Settling Parties filed a settlement over the opposition of the Market Monitor on January 31, 2024. The Presiding Judge declined to certify the settlement by order issued March 13, 2024, under Rule 602(h)(2). The Settling Parties filed a motion for reconsideration and, in the alternative, a motion to permit interlocutory appeal, under Rule 715(b) on March 28, 2024. On March 29, 2024, the Presiding Judge denied Settling Parties' motions. The Settlement Parties filed a motion to permit interlocutory appeal under Rule 715(c) to the motions commissioner on April 5, 2024. The motions commissioner determined not to refer the appeal to the Commission on April 12, 2024. By Order issued April 25, 2024, the Presiding Judge reinstated a procedural schedule for the hearing.

Despite the decision not to certify the settlement that did not include the Market Monitor and was unsupported by substantial evidence, the Settling Parties continue to seek approval of the settlement over the objections of the Market Monitor. The Settling Parties do not like the Presiding Judge's evaluation of the settlement under the applicable rules, and hope that with the appointment of a Settlement Judge, another decision maker will apply the rules differently and approve the same or substantially similar settlement over the objection of the Market Monitor.

Good cause exists to reject a settlement motivated by forum shopping. Counsel for Vistra Corp. and Dynegy Marketing and Trade, LLC revealed that this is the objective in an exchange with the Presiding Judge at a prehearing conference convened April 24, 2024.³ Settling Parties claim it is unclear whether the newly appointed Settlement Judge or the Presiding Judge would have the authority to certify the settlement.⁴ In this manner the

³ Tr. at 192:14–194:10, Docket No. EL21-91-003.

⁴ *Id.*

Settling Parties would bypass the rejection of the settlement by the Presiding Judge and the Commission and hope to obtain approval of the same or substantially similar settlement by a Settlement Judge with a different opinion on how to apply Rule 602. The Commission has stated that forum shopping is improper and has sought to discourage it.⁵

Counsel took objection to the characterization of their proposal as forum shopping.⁶ Counsel failed to provide in the prehearing conference and continues to fail to provide any other credible basis for the Motion. There is no basis for the assertion that the appointment of a Settlement Judge will promote a “more broad-based, more consensus-based settlement.” The Settlement Parties continue to support the settlement filed January 31, 2024. The Market Monitor continues to oppose it. The appointment of a Settlement Judge will not change the positions of the parties.

The Settlement Parties do not need a Settlement Judge to facilitate an agreement among themselves. The Settlement Parties have reached an agreement among themselves. The Market Monitor does not need a Settlement Judge to attempt to persuade it to accept settlement at a level that is unjust and unreasonable, excessive, inaccurate based on objective, publicly available metrics, and contrary to the public interest. After the decision not to certify the settlement on March 29, 2024, the Market Monitor prepared a statement of its position on an acceptable settlement and that statement was circulated among Staff and the Settling Parties. The Market Monitor is not aware of any change in the position of the Settling Parties. The Market Monitor is available for continued discussion of the settlement on reasonable

⁵ See, e.g., *City of Palm Springs*, 76 FERC ¶ 61,127, 61704 (1996) (“[A]n order approving Palm Springs’ application would wrongly encourage forum shopping by buyers or others dissatisfied with the decision of the state regulatory authority.”); see also *Murray v. Safir Law P.L.C.*, 2024 U.S. App. LEXIS 9600 at 7 (6th Cir.) (Upholding sanctions on plaintiff because it “engaged in forum shopping and improper removal, failed to set forth good-faith bases challenging the courts’ discretionary rulings, raised numerous frivolous arguments, and unreasonably and vexatiously multiplied the proceedings for the purpose of harassment or delay... [and] caused ... unnecessary attorney fees, expenses, and effort.”).

⁶ *Id.* at 202:5–10.

terms under the authority of the Presiding Judge. The Market Monitor does not commit to participate in reinstated settlement judge proceedings.

Under the circumstances, renewed settlement judge proceedings would be a waste of time and resources. Such proceedings would be an unhelpful diversion from the effort needed to obtain resolution through hearing procedures. Indeed, hearing procedures are the only means available to obtain an answer to the core factual issue in this proceeding: the impact of the January 18, 2024, change to tax laws applicable to the rates for black start service at issue in this proceeding.

The hearing schedule should proceed. The Motion should be denied.

II. CONCLUSION

The Market Monitor respectfully requests that this answer be afforded due consideration as the issues raised in the Motion are resolved.

Respectfully submitted,



Jeffrey W. Mayes

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

Dated: May 3, 2024

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 3rd day of May, 2024.



Jeffrey W. Mayes

General Counsel

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Eagleville, Pennsylvania 19403

(610) 271-8053

jeffrey.mayes@monitoringanalytics.com