

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

PJM Interconnection, L.L.C.

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Docket No. ER24-2995-001

**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”),² submits this answer to the motion for stay and request for rehearing submitted by Affirmed Energy LLC (“Affirmed”) on December 5, 2024. Affirmed requests a stay of and rehearing of the Commission’s November 5, 2024, order accepting PJM tariff revisions confirming the removal of Energy Efficiency (“EE”) from payment of subsidies in its wholesale capacity market construct (“November 5 Order”).³

Because there is no basis for granting a stay or for granting rehearing, both the motion for stay and the request for rehearing should be denied.

¹ 18 CFR §§ 385.212 & 385.213 (2024).

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”).

³ See *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,095 (2024).

I. ANSWER

A. The Motion for Stay Should Be Denied.

Affirmed motion for stay does satisfy the Commission's test for granting a stay to which it cites:

Under this standard, the Commission considers a number of factors, such as whether the movant will suffer irreparable injury in the absence of a stay, whether the issuance of a stay would substantially harm other parties, and where the public interest lies. If the party requesting the stay is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine other factors.⁴

There is no irreparable injury. Affirmed alleges only economic harm, and Affirmed concedes: "Economic loss alone does not constitute irreparable harm."⁵

Granting stay will substantially harm other parties and does not serve the public interest. PJM customers pay hundreds of millions of dollars in subsidies to Affirmed and other EE sellers even though there is no basis in the existing tariff for such payments.⁶ Customers have paid a cumulative total of \$904M in subsidies for EE including the 2025/2026 Delivery Year. The cost for the 2025/2026 Delivery Year would have been \$820.6 million if CSPs had offered the same level of MW as in the prior delivery year but for actions taken by PJM to more carefully review unsupported and unverifiable measurement and verification plans. If the capacity price were equal to the maximum price in the next base residual auction

⁴ Affirmed at 5, citing *Boyce Hydro Power, LLC*, 162 FERC ¶ 61,007 at P 5 (2018).

⁵ *Id.*, citing *id.* at P 13.

⁶ See Complaint of the Independent Market Monitor for PJM v. PJM, Docket No. EL24-126-000 (July 10, 2024). On November 19, 2024, the Market Monitor filed a motion to withdraw the complaint based on PJM's filing the revisions approved in the November 1st Order ("IMM Complaint").

for 2026/2027 of \$695.00 per MW-day and EE MW equaled the level in the 2024/2025 Delivery Year, customers would be required to pay \$1.9 billion in subsidies.⁷

Affirmed makes repeated reference to stranded investment in EE. To support this allegation, Affirmed cites their investment in 2023/2024 installation period resources.⁸ Affirmed's argument is factually inaccurate. Under the most recent auction schedule, 2023/2024 installation period resources were only eligible to participate in a single future auction, the 2026/2027 BRA.⁹ With the delay of the 2026/2027 BRA to July 2025, 2023/2024 installation period resources are not eligible for any future auctions. Granting a stay does not preserve the status quo.¹⁰ Under the status quo, Affirmed is not eligible to receive subsidies under the filed PJM tariff.¹¹

Affirmed has not shown that a challenge to the November 1st Order is likely to prevail on appeal.

The motion for stay should be denied.

B. The Request for Rehearing Should Be Denied.

The arguments in the request for rehearing have been rejected in the November 1st Order. The request for rehearing provides no reason to change the result of the November 1st Order. The November 1st Order does not violate the filed rate doctrine because (i) the order has only prospective effect and (ii) the order does not change any filed tariff rule providing a basis for Affirmed to receive subsidies.

⁷ See Answer and Motion to Leave for Answer of The Independent Market Monitor for PJM, Docket No. ER24-2995-000 (October 14, 2024).

⁸ Affirmed at 25–26.

⁹ See PJM, Approved Installation Periods by Auction <<https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/approved-installation-periods-by-auction.xlsx>> (April 25, 2024).

¹⁰ Affirmed at 8, citing *Pa. Power & Light Co.*, 23 FERC ¶ 61,215 at 61,447 (1983).

¹¹ See IMM Complaint.

The request for rehearing should be denied.

II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213, permit answers to motions, but do not permit answers to requests for rehearing 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.¹² 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 to the request for rehearing be permitted.

III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this answer and deny the motion for stay and the request for rehearing.

Respectfully submitted,



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¹² See, e.g., *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,241 at P 16 (2009) ("We will accept the answers and responses to the requests for rehearing because they provide information that assisted us in our decisionmaking process."); *ISO New Eng., Inc.*, 120 FERC ¶ 61,087 at P 30 (2007) ("We will accept the parties' answers to the petitions for rehearing . . . because they have provided information that assisted us in our decision-making process."); *KN Wattenberg Transmission LLC*, 94 FERC ¶ 61,189 at 61,671 (2001) (finding good cause to accept an answer to a request for rehearing to ensure a complete record).

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Dated: December 16, 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 16th day of December, 2024.



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