

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

Monongahela Power Company and )  
Allegheny Energy Supply Company, LLC ) Docket No. EC17-88-000  
)  
)

**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,<sup>1</sup> Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM<sup>2</sup> (“Market Monitor”), submits this answer to the answer submitted by FirstEnergy subsidiaries Monongahela Power Company and Allegheny Energy Supply Company, LLC on June 28, 2017 (“FE”) to comments filed by the Market Monitor on May 26, 2017. FE’s answer does not establish that the proposed transfer of the Pleasants Power Station (“Pleasants”) is consistent with the public interest in competition. False characterization of the Market Monitor’s comments as an attack on state prerogatives does not contribute to FE’s meeting its burden under Section 203 of the Federal Power Act. Arguments that the Market Monitor has not demonstrated that the proposed transaction does not meet the criteria for approval of an inter affiliate transaction are misplaced. FE has the burden to show that the transaction meets the applicable criteria, and it has not. Unless and until FE satisfies the applicable standards of review, its request should be denied.

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<sup>1</sup> 18 CFR §§ 385.212 & 385.213 (2016).

<sup>2</sup> Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”) or the PJM Operating Agreement (“OA”).

## I. ANSWER

FE claims (at 2–9) that the Market Monitor’s comments in this proceeding are an attack on West Virginia’s ability to engage in integrated resource planning. West Virginia’s authority is not an issue in this proceeding. The Market Monitor is not questioning West Virginia’s authority. The Market Monitor’s arguments pertain only to this proceeding, which is by definition a FERC matter. The Pleasants transfer implicates competition in PJM wholesale power markets, which are squarely within this Commission’s jurisdiction. FE has not shown that transferring the uneconomic Pleasants facility into rate base and imposing the costs on customers that are now borne by FE shareholders is in the public interest. FE is required to show that the proposed transaction is consistent with the public interest in competition.<sup>3</sup> FE has not met that burden.

The argument that the proposed Pleasants transfer is a valid part of an integrated resource plan is pretext. The proposed Pleasants transfer is an attempt to avoid retirement or sale of a unit that has been participating in the PJM competitive wholesale power market, but has become uneconomic for shareholders to continue to own. The Transaction is one of multiple approaches to subsidizing uneconomic resources that threaten to undermine PJM’s competitive wholesale market design.<sup>4</sup>

The Commission has the authority and responsibility to deny FE’s petition under Section 203 of the Federal Power Act if it finds that the proposed transfer does not meet the public interest standard, including the public interest in competition.<sup>5</sup> The proposed

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<sup>3</sup> See, e.g., *Ameren Energy Generating Co.*, Opinion No. 473, 108 FERC ¶ 61,081 at P 59 (2004) (*Ameren*).

<sup>4</sup> See *EPSA v. Star*, Case No. 17-cv-01164 (U.S. Dist. Ct. N.D. of Ill.); Ohio P.U.C. Case Nos. 16-1297 and 14-1693. *2016 State of the Market Report* at 1–2 (“The issue of external subsidies emerged more fully in 2016. These subsidies are not directly part of the PJM market design but nonetheless threaten the foundations of the PJM capacity market as well as the competitiveness of PJM markets overall.”).

<sup>5</sup> 108 FERC ¶ 61,081 at P 59.

Pleasants transfer presents to the Commission the same concerns that the Commission describes in *Ameren* in explaining the public interest standard and the public interest in competition.<sup>6</sup> For example, the Commission stated the concern (at P 61) that, “[p]otential non-affiliated generators that perceive that affiliated generators have a ‘safety net’ available to them may be discouraged from entering the market.” The regulatory policy in PJM is reliance on competitive markets, and the proposed transaction threatens that policy. Public subsidies to retain uneconomic units are not a direct benefit to customers and threaten competitive wholesale power markets by undermining incentives for competitive entry and investment.

FE also responds (at 9–14) to the arguments raised by the Market Monitor that FE has not met the criteria for approving inter affiliate transactions with an argument that the Market Monitor has not proved FE fails to meet such criteria.<sup>7</sup> The burden of proof is FE’s.<sup>8</sup> The Market Monitor and others explain that FE’s showing is deficient. FE’s answer does not address those deficiencies.

## 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.<sup>9</sup> In this answer, the Market Monitor provides the

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<sup>6</sup> *Id.* at PP 59–65.

<sup>7</sup> *See* 108 FERC ¶ 61,081 at P 70.

<sup>8</sup> *See Pacific Power & Light Co. v. Federal Power Com.*, 111 F.2d 1014, 1017 (9th Cir. 1940) (“The burden is on [applicants] of showing affirmatively that the acquisition or merger is consistent with the public interest.”)

<sup>9</sup> *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 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.

### 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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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).

## 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 13<sup>th</sup> day of July, 2017.



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