

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

PJM Interconnection, L.L.C.

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ER16-372-004

**ANSWER AND MOTION FOR LEAVE TO ANSWER
OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 213 of the Commission’s Rules and Regulations, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”), submits this answer to the pleading styled as a “motion for clarification” filed by PJM Interconnection, L.L.C. on March 6, 2017 (“March 6th Request”).¹ ² PJM seeks clarification of certain unremarkable language in the February 3rd Order in this proceeding recognizing that the Market Monitor, like other persons, has recourse to file complaints against PJM when it disagrees with how PJM is interpreting or implementing the rules.³ The March 6th Request purports to seek clarification (at 3) that “the ordering language should not be read to suggest that the PJM IMM can initiate a complaint *against PJM* when it disagrees with a Fuel Cost Policy accepted by PJM” [emphasis in original]. The March 6th Request proposes to specifically prohibit market monitors from independent access to the Rules of Practice and Procedure to resolve disputes with the RTOs/ISOs.⁴ The proposal

¹ 18 CFR § 385.213 (2016).

² 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”).

³ *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133 (2017).

⁴ See PJM at 3–4.

contradicts explicit tariff authorization to the Market Monitor to make filings with Commission to resolve disputes and to address market design issues.⁵

Market monitors have independent access to the same rules and procedures as everyone else. The PJM Market Monitoring Plan explicitly authorizes the Market Monitor to make filings before the Commission and imposes no limitations. The goal of the March 6th Request is to limit the Market Monitor's outlets for bringing issues before the Commission in carrying out its core functions. The March 6th Request amounts to an attack on the independence of the market monitoring function and it should be rejected.

The March 6th Request fails to properly identify any ordering language to be clarified or reconsidered. The February 3rd Order does not propose to change any entity's ability to file a complaint under Rule 206.⁶ The March 6th Request specifically refrains from asking for rehearing/clarification of the actual "ordering" language.⁷

The March 6th Request amounts to an unsupported request to change the basic and long established rules concerning who may file a complaint against whom. It is a request for rehearing of and a collateral attack on the orders that established Rule 206 and on the tariff provisions that explicitly authorize the Market Monitor to "file a petition or initiate other regulatory proceedings" when it "determines that there is an issue about the proper and lawful application of a rule" and to "make filings with the Commission on market design issues."⁸

The March 6th Request should be rejected because it improperly seeks rehearing after the applicable statutory deadlines for requests for rehearing.

⁵ OATT Attachment M § IV.D & IV.D-1.

⁶ 18 CFR § 385.206.

⁷ See PJM at 2 ("PJM understands and accepts the Commission's statement that "such disputes are the province of the Commission and its Administrative Law Judges.").

⁸ OATT Attachment M § IV.D & IV.D-1.

If the March 6th Request is nevertheless accepted, it should be denied for its lack of support, merit and consistency with the independence of the market monitoring function.

I. ANSWER

A. The March 6th Request Should Be Rejected Because It Is a Request for Rehearing Filed Out of Time.

The March 6th Request does not ask for clarification of the February 3rd Order. The March 6th Request instead asks the Commission to create a new rule that would provide RTOs/ISOs special immunity from complaints filed by market monitors. The request for rehearing does not really apply to the February 3rd Order, but applies rather to the orders that established Rule 206, which provides for who may file complaints against whom,⁹ and the order approving the tariff provisions that explicitly authorize the Market Monitor to “file a petition or initiate other regulatory proceedings” when it “determines that there is an issue about the proper and lawful application of a rule” and to “make filings with the Commission on market design issues.”¹⁰

In any case, the March 6th Request should be rejected for failure to comply with the statutory deadline for requests for rehearing.¹¹ The request for rehearing is decades late for the orders that established Rule 206, years late for the tariff provisions explicitly authorizing Market Monitor filings, and one day late for the February 3rd Order.¹²

⁹ See 18 CFR § 385.206 (Order No. 225, 47 Fed. Reg. 19022 (May 3, 1982), as amended by Order No. 647, 69 Fed. Reg. 32439 (June 10, 2004); Order No. 663, 70 Fed. Reg. 55725 (Sept. 23, 2005); 71 Fed. Reg. 14642 (Mar. 23, 2006); Order No. 714, 73 Fed. Reg. 57538 (Oct. 3, 2008)).

¹⁰ OATT Attachment DD § IV.D & D-1.

¹¹ See Federal Power Act § 313, 16 U.S.C. § 824l. Because the FPA establishes a 30-day statutory deadline for requests for rehearing, it cannot be altered by rule (i.e. 18 CFR § 2007). See *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) (“The 30-day time requirement of [the FPA] is as much a part of the jurisdictional threshold as the mandate to file for a rehearing.”)

¹² *Id.*

B. The March 6th Request Has No Merit and Should Be Denied.

If the March 6th Request is not rejected, it should be denied for lack of merit.

1. The Market Monitor May File Complaints Under Rule 206.

The March 6th Request ignores the Commission's Rules of Practice and Procedure, which determine who may file a complaint against whom.

Rule 206 states:

Any person may file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction.

Rule 105(d) defines a "person:"

[P]erson means an individual, partnership, corporation, association, joint stock company, public trust, an organized group of persons, whether incorporated or not, a receiver or trustee of the foregoing, a municipality, including a city, county, or any other political subdivision of a State, a State, the District of Columbia, any territory of the United States or any agency of any of the foregoing, any agency, authority, or instrumentality of the United States (other than the Commission), or any corporation which is owned directly or indirectly by the United States, or any officer, agent, or employee of any of the foregoing acting as such in the course of his or her official duty.¹³

The Market Monitor meets the broad definition of a "person" and Rule 206 applies to the Market Monitor just as it does to any other person. The Market Monitor may file a complaint.

¹³ 18 CFR § 385.102(d). See *Competitive Transmission Developers v. New York Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,164 at P 31 n.80 (2016) ("A "person" is broadly defined as "an individual . . . an organized group of persons, whether incorporated or not . . .").

PJM meets the definition of an other “person” who may be named in complaints. Accordingly, the Rules of Practice and Procedure permit the Market Monitor to name PJM in a complaint. The Market Monitor may file a complaint against PJM.

2. The Market Monitoring Plan Authorizes the Market Monitor to Initiate Complaints Against PJM.

Section IV.D-1 of Attachment M to the OATT specifically authorizes the Market Monitor to initiate regulatory proceedings to resolve compliance issues. Section IV.D-1 states:

The Market Monitoring Unit shall monitor compliance with PJM Market Rules and shall take action on compliance issues. The Market Monitoring Unit has the exclusive authority to perform the functions set forth in Attachment M and the Attachment M-Appendix. If the Market Monitoring Unit detects a Market Violation involving potential misconduct, it shall, if the applicable criteria are met, refer the matter in accordance with Section IV.I of Attachment M. If the Market Monitoring Unit detects a compliance issue and determines that there is an issue about the proper and lawful application of a rule, and the Market Monitoring Unit makes a preliminary determination that no misconduct is evident and the issue involves a difference about the appropriate calculation of the level of an input, the Market Monitoring Unit may file a petition or initiate other regulatory proceedings addressing the issue. The Market Monitoring Unit may, where it deems appropriate, submit a confidential Referral and initiate a public regulatory proceeding concerning the same underlying matter.

PJM acknowledges that Section IV.D-1 authorizes the Market Monitor to file complaints, but argues that “these provisions provide the express right to file a complaint ... directed against the Capacity Market Seller, not PJM.” Section IV.D-1 contains no such limitation. No such limitation is implicit. The language specifies situations where “no misconduct is evident and the issue involves a difference about the appropriate calculation of the level of an input.” The Market Monitor anticipates that some of such complaints would name the responsible market participant, but that is not necessarily the case. Now that PJM has the explicit role of approving fuel cost policies that may result in the exercise

of market power, the prospect of a dispute between the Market Monitor and PJM is enhanced.

If PJM's interpretation of the tariff language is the core problem, then a complaint may need to name PJM, and possibly only PJM. An independent market monitor should decide the relief sought and against whom. The RTO/ISO should not be allowed to control that decision. The request to uniquely limit the Market Monitor's options in the Commission's processes conflicts with PJM's assertion (at 3) that "the adversarial process [is] a foundation of judicial and quasi-judicial proceedings in this country." PJM does not provide a valid reason why the Market Monitor should have limitations imposed on its role in a process so fundamental or why PJM should enjoy special immunity from that process.

PJM states (at 6 n.18): "Good policy underlies these rules insofar as they avoid placing the PJM Board of Managers (who has responsibility for overseeing both the IMM and PJM management) in the unworkable position of reconciling the fiduciary duty of loyalty it owes to the PJM organization with its Tariff-obligated duty to oversee an entity which has sued the PJM organization." PJM mischaracterizes the relationship between the PJM Board of Managers and the Market Monitor. The Board contracts with but does not oversee the Market Monitor.¹⁴

¹⁴ See OATT Attachment M § III; *see also* Market Monitoring Services Agreement by and between PJM Interconnection, L.L.C. and Monitoring Analytics, LLC § 27 ("Pursuant to its authority and responsibility in Attachment M, the PJM Board evaluates whether IMM is adequately performing its functions. The PJM Board has the authority and responsibility to determine the adequacy of the performance of the independent market monitoring function, but has no authority to manage or direct the activities of such independent function... Review of the IMM's performance referenced in this paragraph 27 may include, but not be limited to, the following: ... Promoting competitive and efficient PJM markets. The PJM Board expects that the IMM will be a vigorous and competent advocate for competitive and efficient PJM markets, and that it will protect the integrity of PJM markets. In evaluating whether the IMM performs adequately, the Board shall consider, among other things, the level and quality of the IMM's efforts to promote (i) efficient and accurate pricing; (ii) a competitive market structure, or, to the extent that the structure is not competitive, effective mitigation rules and the proper application of such rules; (iii) market rules that promote competition and efficiency and that are transparent and non-discriminatory; and (iv) compliance with market rules and their purpose and proper implementation of such rules. The Board shall also

The express tariff authorization of the Market Monitor to initiate regulatory proceedings is not limited to disputes over offer levels.¹⁵ The tariff also provides that the Market Monitor may “make filings with the Commission on market design issues.”¹⁶ PJM is responsible for its market design and would be named in most such filings. PJM was named in a complaint filed by the Market Monitor, which was accepted and resolved.¹⁷

The March 6th Request purports to seek clarification (at 3) that “the ordering language should not be read to suggest that the PJM IMM can initiate a complaint *against PJM* when it disagrees with a Fuel Cost Policy accepted by PJM” [emphasis in original]. The ordering language stated: “Resolution of such disputes between an RTO and its market monitor ... are the province of the Commission and its Administrative Law Judges to address in response to a complaint.” There is no request to clarify anything. The March 6th Request seeks to replace so called “ordering language” with language that exactly contradicts the identified language.

PJM offers no logical basis for the Commission to grant its request. PJM cites (at 3–4) to Order No. 719, and the process set forth in that order for referrals of market design flaws. Nowhere does Order No. 719 grant immunity to RTOs/ISOs from complaints filed by their market monitors.¹⁸ Market design referrals provide a means for market monitors to report

consider whether the IMM has taken adequate steps to detect and call attention to actual or attempted market manipulation, the exercise of market power, physical and economic withholding, and faulty operation of the markets.”)

¹⁵ OATT Attachment M § IV.D.

¹⁶ *Id.*

¹⁷ *See Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,0250 (2016).

¹⁸ The stated objective in Order No. 719 (at P 316) is to “strengthen MMU independence,” not to weaken or constrain it. Reducing the procedural options available to market monitors does not strengthen them.

design flaws to the Commission on a confidential basis to avoid exploitations of those flaws by market participants while the Commission determines how to address the issue.¹⁹

The process for confidential market design referrals is not designed to resolve disputes over market design or tariff interpretation between RTOs/ISOs and their market monitors. When the Market Monitor seeks to change a rule, or the misinterpretation or misapplication of a rule, the process should be public and transparent unless there are extraordinary concerns that require use of a confidential process. All interested stakeholders should be afforded notice and opportunity to be heard in such proceedings. The March 6th Request's proposed reliance on confidential market design referrals would deny transparency, notice and opportunity to be heard.

3. Impartiality and Objectivity Do Not Require That the Market Monitor Agree with PJM.

The March 6th Request argues (at 3) that market monitors should not be permitted to file complaints against RTOs/ISOs because they must be "impartial." PJM concerns are misplaced. Market Monitors are required to be independent of market participants and the RTO. Market Monitors are required to be objective.²⁰ Impartial and objective are synonyms. Nothing about the adversarial process precludes the adoption and advocacy of objective positions that serve the public interest or are consistent with a particular Commission policy to regulate through competition. One important aspect of such independence and objectivity is the ability of market monitors to take disputes with their RTOs/ISOs to the Commission. An objective Market Monitor is not by definition precluded from filing a complaint against PJM.

¹⁹ See 18 CFR § (g)(3)(v)(A) ("The Market Monitoring Unit must limit distribution of its identifications and recommendations to the independent system operator or regional transmission organization and to the Commission in the event it believes broader dissemination could lead to exploitation, with an explanation of why further dissemination should be avoided at that time.").

²⁰ OATT Attachment M § I.

The March 6th Request contradicts the Commission's recognition in the February 3rd Order, backed by the Commission's Rules of Practice and Procedure, tariff provisions authorizing the Market Monitor to make filings with the Commission, and past practice, that the Market Monitor may resolve complaints with PJM by filing complaints. Accordingly, it should be denied.

II. MOTION FOR LEAVE TO ANSWER

Although styled as motion, to which answers would be permitted, this pleading should be deemed a out of time request for rehearing. The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to answers or 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.²¹ 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.

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.

²¹ 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).

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

Catherine Tyler Mooney
Senior Economist
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
catherine.mooney@monitoringanalytics.com

Dated: March 10, 2017

Respectfully submitted,



Jeffrey W. Mayes

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

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 10th day of March, 2017.



Jeffrey W. Mayes

General Counsel

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Eagleville, Pennsylvania 19403

(610) 271-8053

jeffrey.mayes@monitoringanalytics.com