

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

Hill Top Energy Center LLC	)	Docket No. ER21-445-000
Paulsboro Refining Company LLC	)	Docket No. ER21-706-000
Chalk Point Power, LLC	)	Docket No. ER21-573-000
Dickerson Power, LLC	)	Docket No. ER21-574-000
Lanyard Power Marketing, LLC	)	Docket No. ER21-575-000
Morgantown Power, LLC	)	Docket No. ER21-577-000
Morgantown Station, LLC	)	Docket No. ER21-578-000
Tod Solar LLC	)	Docket No. ER21-258-000
Altavista Solar, LLC	)	Docket No. ER21-44-000
Battery Utility of Ohio, LLC	)	Docket Nos. ER13-1667-000
	)	ER13-1667-005
Cube Yadkin Generation LLC	)	Docket Nos. ER16-2278-000
	)	ER16-2278-003
Longview Power, LLC	)	Docket Nos. ER10-1556-000
	)	ER10-1556-009
Kestrel Acquisition, LLC	)	Docket Nos. ER18-1106-000
	)	ER18-1106-002

(not consolidated)

**COMMENTS OF PJM INTERCONNECTION, L.L.C.
IN RESPONSE TO THE INDEPENDENT MARKET MONITOR FOR PJM**

PJM Interconnection, L.L.C. (“PJM”) respectfully submits these comments in response to the Protest of the Independent Market Monitor for PJM (“Market Monitor”) in the above-captioned proceedings (“Market Monitor Protest”). The Market Monitor has protested the applications of parties seeking Category 2 market-based rate (“MBR”) authority, as well as triennial market-power update filings of Category 2 MBR sellers, arguing that the current approach for market power mitigation in the PJM Region is insufficient to support reliance on the presumption of effective market power mitigation by PJM.¹ The Market Monitor filed largely similar protests in each of the above-captioned

¹ See *Chalk Point Power, LLC*, Protest of the Independent Market Monitor for PJM, Docket Nos. ER21-257-000, et al. at 4-5 (filed Dec. 28, 2020) (“Market Monitor Protest”). Because the Market

proceedings and in numerous other proceedings in which PJM already commented.² The Market Monitor asks the Commission to limit these sellers' PJM capacity market and energy market offers to levels set by the Market Monitor's preferred methodologies. The Commission previously rejected similar protests from the Market Monitor and suggested the proper forum for such claims would be a complaint proceeding under Federal Power Act ("FPA") section 206 investigation.³

PJM does not normally participate in these types of proceedings, which are essentially a compliance filing for individual Market Sellers or the standard application process to become a Market Seller. PJM does so here solely to address the Market Monitor's generic assertions of alleged insufficiencies in the market rules in PJM's Open Access Transmission Tariff ("Tariff") and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement").⁴ PJM generally supports the efforts of the Market Monitor to ensure that the PJM markets are competitive

Monitor's protests in the above-captioned proceedings are substantially similar to each other, for convenience, PJM uses this protest as a representative example throughout these comments.

² See, e.g., *Wheelabrator Frackville Energy Co.*, Comments of PJM Interconnection, L.L.C. in Response to the Independent Market Monitor for PJM, Docket Nos. ER10-3237-011, et al. (filed Oct. 16, 2020) (commenting on protests filed in eight proceedings); *Longview Power, LLC*, Comments of PJM Interconnection, L.L.C. in Response to the Independent Market Monitor for PJM, Docket Nos. ER10-1556-009, et al. (filed Sept. 29, 2020) (commenting on protests filed in 43 proceedings).

³ See *Albemarle Beach Solar, LLC*, 173 FERC ¶ 61,215, at PP 26-32 (2020) (rejecting the Market Monitor's protest, noting that the Market Monitor's concerns are "generic in nature" and "not properly addressed in the market-based rate authority proceedings of individual companies[,] and suggesting that the Market Monitor's long-term underlying concerns would best be addressed in the currently pending complaint proceeding before the Commission); *Harts Mill Solar, LLC*, 173 FERC ¶ 61,216, at PP 26-32 (2020) (same); *Toms River Merchant Solar, LLC*, 174 FERC ¶ 61,087, PP 19, 21-26 (2021) (noting that the IMM filed a motion for clarification in the aforementioned *Albemarle Beach Solar, LLC* and *Harts Mill Solar, LLC* proceedings, and rejecting the Market Monitor's protest in the same manner).

⁴ For the purpose of this filing, capitalized terms not defined herein shall have the meaning as contained in the Tariff and Operating Agreement.

and free from the improper exercise of market power. However, the Market Monitor’s challenges to PJM’s market rules are misplaced here—the Commission cannot and should not establish separate PJM market rules different from those in the currently effective Tariff and Operating Agreement, on a subset of potential PJM Market Sellers that recently filed MBR applications or triennial market power updates. While changes to PJM market rules (via MBR authorization conditions or otherwise) are thus plainly outside the scope of these proceedings (and nothing in this pleading should be taken to suggest otherwise), as the market administrator and Regional Transmission Organization (“RTO”), PJM briefly addresses the Market Monitor’s assertions that PJM’s capacity and energy market rules are inadequate.

I. COMMENTS

A. PJM’s Current Market Rules Provide Appropriate Market Power Mitigation and the Mere Presence of Pending Challenges Do Not Render Such Rules Ineffective.

It is noted at the outset that the mere existence of pending challenges to the current market rules does not mean there is a lack of effective market power mitigation in PJM’s markets. Rather, PJM’s existing market power mitigation rules, which were previously reviewed and approved by the Commission, provide for robust market power mitigation. Moreover, any outstanding complaints involving PJM’s market power mitigation rules are appropriately resolved pursuant to a properly initiated FPA section 206 proceeding—separate from these MBR-related filings.⁵

⁵ See *Albemarle Beach Solar, LLC*, 173 FERC ¶ 61,215 at P 31 (“The Commission has made clear that intervenor-proposed changes to PJM’s existing tariff must be made through a complaint under section 206 of the FPA and not through protests to a section 205 filing.”) (quotation omitted); *Harts Mill Solar, LLC*, 173 FERC ¶ 61,216 at P 31 (same); *Toms River Merchant Solar, LLC*, 174 FERC ¶ 61,087, at P 25 (same).

The Market Monitor asserts that the PJM capacity market “is not competitive due to inadequate market power mitigation[.]”⁶ based on its pending complaint challenging the default Market Seller Offer Cap and its discussions of “noncompetitive behavior” in its reviews of the capacity market.⁷ This attack on the capacity market power mitigation rules is unsubstantiated, as PJM demonstrated in its answer to the Market Monitor’s complaint in Docket No. EL19-47.⁸ The Market Monitor Protest adds nothing new to support its existing challenge to PJM’s capacity market rules. Nor does the Market Monitor demonstrate any changed circumstances supporting the need for such extreme measures.

In its EL19-47 Answer, PJM demonstrated that the Market Monitor’s claim that the default Market Seller Offer Cap “permits the exercise of market power” is unsupported by the facts.⁹ In particular, PJM noted that the “market has consistently settled below the default [Market Seller Offer Cap],”¹⁰ and the market’s single clearing price design “creates an incentive for resources to submit offers that accurately reflect their risks, rather than inflating them, in order to increase the likelihood that they will clear.”¹¹ Accordingly, the capacity market remains workably competitive based on mitigation rules that have been thoroughly litigated before this Commission.¹²

⁶ See, e.g., Market Monitor Protest at 4.

⁷ *Id.* at 4-5.

⁸ Answer of PJM Interconnection, L.L.C., Docket No. EL19-47-000 (Apr. 9, 2019) (“EL19-47 PJM Answer”).

⁹ *Id.* Answer at 6.

¹⁰ *Id.*

¹¹ *Id.* at 7 (quoting *ISO New England Inc.*, 147 FERC ¶ 61,172, at P 98 (2014)).

¹² See *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053, at P 86 (2005) (“Mitigation should only be imposed in situations in which there is a reasonable prospect that a generator can exercise market power. It is not appropriate to mitigate in workably competitive markets[.]”).

Moreover, it is the very role of the Market Monitor to review capacity market offers that it suspects may be an exercise of market power and ultimately refer offending sellers to the Commission.¹³ The Commission’s own regulatory oversight program which relies, in part, on referrals from the Market Monitor as well as extensive review of any market rule changes proposed by PJM provide important checks on specific circumstances of market power and market manipulation. In addition, if the Market Monitor has concerns regarding specific activity by a Market Seller that contravenes existing market rules, then the Market Monitor should demonstrate those specific concerns. Use of MBR authority application proceedings or periodic MBR authority reviews to upset previously litigated (or pending) changes is inconsistent with the purpose of the MBR proceedings. Further, such use would effectively transform the MBR proceedings into a new avenue to challenge market rules. The Commission should be reluctant to allow protestors to wrest the market-based rate authority analyses from its foundational underpinnings and approach.

Likewise, the Market Monitor fails to support its assertion that the currently effective energy market power mitigation rules are unreasonable or insufficient. In a few brief sentences, the Market Monitor appears to imply that Market Sellers are able to exert market power because, when they fail the Operating Agreement’s Three-Pivotal Supplier (“TPS”) test: (1) their mitigated offers can include “a substantial markup” over their cost-based offer; and (2) the sellers are “able to operate, set prices, and collect uplift payments with operating parameters that are less flexible than their defined operating parameter limits.”¹⁴ Thus, the Market Monitor does not appear to challenge the TPS test as a market

¹³ EL19-47 PJM Answer at 9.

¹⁴ Market Monitor Protest at 5.

power screen,¹⁵ but rather objects to the interaction of price and operating parameters in the mitigated offers of a resource that fails the screen.

To the extent the Market Monitor is arguing that the existing market power mitigation rules in the energy market are not working, such assertion is belied by the Market Monitor’s own recent “conclu[sion] that the PJM energy market results were competitive in the first six months of 2020.”¹⁶ Because “[i]t is not appropriate to mitigate in workably competitive markets,”¹⁷ there is no evidence that any modification to the energy market power mitigation rules is necessary at this time.¹⁸

While not entirely clear, PJM believes the Market Monitor’s primary criticism to be that PJM should use the lower of cost-based and price-based offers for resources that fail the TPS test, while *also* utilizing the most flexible operating parameters—even if the lowest offer price is not linked with the most flexible parameters in the energy offer

¹⁵ See Operating Agreement, Schedule 1, section 6.4.

¹⁶ *Quarterly State of the Market Report for PJM: January through June*, Monitoring Analytics, LLC, at 101 (2020), https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2020/2020q2-som-pjm-sec3.pdf. The Market Monitor has stated this same conclusion every year since at least 2005, when the Commission accepted the TPS test in 2005 to mitigate market power in PJM’s energy markets. The Market Monitor’s State of the Market Reports for the years 1999 through the first six months of 2020 are available on its website (https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2020.shtml). In each report, the Market Monitor affirmed the competitive of the energy markets in the first few paragraphs of the section on PJM’s energy markets.

¹⁷ *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053, at P 86.

¹⁸ Notably, the Market Monitor has not attempted to seek its desired market mitigation changes through a dedicated PJM stakeholder process. Instead, the Market Monitor inappropriately attempts to use individual MBR proceedings as a platform to circumvent the PJM stakeholder process, as well as FPA section 206.

schedule submitted by the Market Seller. PJM has previously explained that this approach is unreasonable.¹⁹

Under the existing energy offer capping rules, resources that fail the TPS test are dispatched out of economic merit order on the price-based offer or cost-based offer that results in the lowest cost to the market.²⁰ The resource then runs on the selected offer and its associated operating parameters.²¹ The Market Monitor's apparent alternative would require that PJM unilaterally reconstruct energy offer schedules submitted by Market Sellers.²²

However, the Commission recently reaffirmed that PJM's existing offer capping rules are just and reasonable, including selecting the offer resulting in the least cost.²³

¹⁹ See Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C., Docket No. ER20-955-000, at 8-9 (Mar. 9, 2020) (“ER20-955 PJM Answer”).

²⁰ See Operating Agreement, Schedule 1, section 6.4.1(a). This means mitigated resources committed in the Day-ahead Energy Market are committed at the market-based offer or cost-based offer that PJM's security constrained unit commitment engine determines “results in the lowest overall system production cost,” while mitigated resources in the Real-time Energy Market are dispatched on the offer that yields the “lowest dispatch cost” and not lowest production cost. *Id.* The difference is the result of the fact that, in the Day-ahead Energy Market, PJM uses its security constrained unit commitment engine to determine the least cost solution, whereas in the Real-time Energy Market, PJM employs a static formula to determine the offer that yields the “lowest dispatch cost.”

²¹ Market Sellers may submit a market-based parameter limited schedule that contains different operational parameters than those tied to its cost-based offer. For example, a Market Seller may submit a market-based offer that provides for a lower cost than its cost-based offer (*e.g.*, by extending the resource's run time beyond its minimum run time and thus determining its operational schedule in the most efficient manner).

²² ER20-955 PJM Answer at 8-9. The Market Monitor's approach also may implicate Constitutional issues related to confiscatory outcomes. *Id.* at 8 (citing *Reagan v. Farmers' Loan & Trust Co.*, 154 U.S. 362, 412-13 (1894); *Permian Basin Area Rate Cases*, 390 U.S. 747, 769 (1968); *Smyth v. Ames*, 169 U.S. 466, 523 (1898); *Covington & Lexington Turnpike Rd. Co. v. Sandford*, 164 U.S. 578, 593 (1896); *Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio*, 292 U.S. 398, 404 (1934)).

²³ See, *e.g.*, *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133, at P 24 (2017) (approving, over the Market Monitor's objection, PJM's “Dispatch Cost” formula for determining “the ‘cheapest schedule’ for selecting the ‘lowest overall dispatch cost’” when mitigating resources that fail the TPS test.); see also *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,153 (2017) (finding just and reasonable PJM's proposal for verifying cost-based offers greater than \$1,000/MWh).

Commission precedent requires the “the Market Monitor [to] show[] changed circumstances to warrant revisiting [market power mitigation] practices.”²⁴ The Commission correctly rejected the Market Monitor’s previous attempt to effectuate this same change to energy market mitigation rules.²⁵ Given that the Market Monitor has not alleged any change in circumstance to warrant revising the energy market mitigation rules or met its burden pursuant to FPA section 206, PJM’s energy markets remain just and reasonable, sufficiently protected from the exercise of market power.²⁶

B. Market-Based Rate Application and Triennial Review Proceedings Are Not the Appropriate Forums for Imposing Disparate Rules on a Subset of Market Sellers.

As the RTO and tariff administrator, PJM simply notes that it would be unreasonable, and unduly discriminatory, to impose two substantively different market power mitigation regimes on the PJM energy and capacity markets solely based on the timing of a Market Seller’s submission of its triennial market power update filing or an applicant’s submission of its MBR application. Such an outcome would be particularly unreasonable and unduly discriminatory when there has been no showing of a current or potential exercise of market power by any of the subject Market Sellers or applicants, respectively. However, that is precisely what the Market Monitor is requesting here in these seller-specific proceedings as a condition of the sellers’ continued MBR authority

²⁴ *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,153, at P 58.

²⁵ *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,010, at P 26 (2020).

²⁶ Moreover, the Market Monitor utterly failed to present sufficient evidence to rebut the presumption that PJM’s market rules are just and reasonable and effectively mitigate market power. Mere references to the Market Monitor’s State of the Market Reports, without context or explanation, falls well short of the demonstration required. The reports and the Market Monitor’s terse, ambiguous statements do not sufficiently demonstrate that aggregate market power is a systemic issue in PJM’s markets.

(i.e., seeking the imposition of a new and different set of offer-capping rules in the capacity market and requiring cost-based offers in the energy market). PJM should not be asked to oversee disparate rules and treatment of similarly situated market applicants or sellers, with some operating under the PJM market rules, and others operating under the Market Monitor's proposed conditions.

Finally, the Market Monitor's approach would undermine the statutory and procedural protections afforded to PJM, as the public utility under the FPA, against changes to its currently effective tariff and market rules. The only lawful route to changing those filed provisions is through the appropriate showings under FPA section 206 in a properly initiated proceeding.

II. CONCLUSION

PJM respectfully requests that the Commission recognize the procedural improprieties and substantive deficiencies of the Market Monitor's protest in each of the above-captioned proceedings.

Craig Glazer
Vice President – Federal
Government Policy
PJM Interconnection, L.L.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 423-4743 (phone)
(202) 393-7741 (fax)
Craig.Glazer@pjm.com

Respectfully submitted,

/s/
Chenchao Lu
Senior Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Audubon, PA 19403
(610) 666-2255 (phone)
(610) 666-8211 (fax)
Chenchao.Lu@pjm.com

Paul M. Flynn
Ryan J. Collins
Wright & Talisman, P.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 393-1200 (phone)
(202) 393-1240 (fax)
Flynn@wrightlaw.com
Collins@wrightlaw.com

*Counsel for
PJM Interconnection, L.L.C.*

February 19, 2021

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 Washington, D.C., this 19th day of February 2021.

/s/ Ryan J. Collins

Ryan J. Collins