UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Independent Market Monitor for PJM	)	
v.	)	**Docket No. EL19-47-000**
PJM Interconnection, L.L.C.	)	

MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE PJM POWER PROVIDERS GROUP

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure,[1] the PJM Power Providers Group ("P3")[2] respectfully submits this Motion for Leave to Answer and Answer ("Answer") in response to the above-captioned complaint[3] ("Complaint") that Monitoring Analytics, LLC, acting in the capacity for PJM as the Independent Market Monitor ("IMM"), filed on February 21, 2019, against the PJM Interconnection, L.L.C. ("PJM"). The IMM's Complaint against PJM requests that the Commission direct PJM to revise the expected number of Performance Assessment Intervals ("PAI") used to set the current default Market Seller Offer Cap ("MSOC") in

[1] 18 C.F.R. §§ 385.212; 385.213 (2018).

[2] P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. ("PJM") region. Combined, P3 members own approximately 84,000 MWs of generation assets, produce enough power to supply over 20 million homes and employ over 40,000 people in the PJM region covering 13 states and the District of Columbia. For more information on P3, visit www.p3powergroup.com. The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

[3] *See Complaint of the Independent Market Monitor for PJM*, Docket No. EL19-47 (filed Feb. 21, 2019) (the "Complaint").

Reliability Pricing Model ("RPM") auctions to the IMM's view of a level consistent with a reasonable and supportable expectation of PAI.

I. MOTION FOR LEAVE TO ANSWER

Pursuant to 18 C.F.R. §§ 385.212 and 385.213, P3 respectfully submits this Motion for Leave to Answer and Answer. On February 28, 2019, pursuant to Rule 214 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. § 385.214 (2018), P3 submitted a doc-less motion to intervene in the above-captioned proceeding. On April 15, 2019, P3 submitted a Protest and Comments in response to the Complaint.[4] P3 respectfully submits this Answer in response to arguments presented in several comments filed in support of the IMM's Complaint. P3 requests that the Commission accept this Motion for Leave to Answer and Answer in order to help contribute to a fuller record and assist the Commission in its decision-making process.

II. ANSWER

A. The Commission Should Not Direct PJM to Adopt a Default Offer Cap Based on Avoided Costs.

In its comments in support of the Complaint, the Organization of PJM States, Inc. ("OPSI") contends that if the Commission cannot determine the reasonable and expected supported PAH (Performance Assessment Hours)/PAIs in the default offer cap, it should consider directing PJM to return to the default offer cap approach prevailing prior to the implementation of Capacity Performance[5]: a reasonable resource class avoided costs that

[4] *See Protest and Comments of the PJM Power Providers Group*, Docket No. EL19-47-000, dated April 15, 2019 ("P3 Protest and Comments").

[5] *PJM Interconnection, L.L.C., et al*, 151 FERC ¶ 61,208 (June 9, 2015) ("CP Order"); affirmed on rehearing, *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61, 157 (May 10, 2016) ("Capacity Performance Rehearing Order"); affirmed by *Advanced Energy Mgmt. All. V. FERC*, 860 F. 3d 656 (D.C. Cir., June 20, 2017) ("Advanced Energy Mgmt.").

capacity resources could employ, along with the option to demonstrate higher unit-specific avoided cost.[6] The Commission should reject OPSI's proposal.

Assuming arguendo that the Commission were to find that the IMM has demonstrated that the use of 30 PAHs to calculate the default MSOC is unjust and unreasonable,[7] no party in this proceeding has demonstrated that the use of a default MSOC that reflects the opportunity costs of assuming a capacity supply obligation is unjust and unreasonable, nor that relying on the avoided costs of a particular resource class to set the default MSOC would be a just and reasonable remedy. In fact, the Commission addressed this very issue (i.e., whether it is just and reasonable to use opportunity costs, i.e., the bonus payments that an energy-only resource could earn to set the default MSOC) in the original Capacity Performance proceeding, as did the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit Court").

Specifically, the Commission found the following in its Capacity Performance Rehearing Order:

> We disagree with those parties asserting that the Commission erred by accepting a default offer cap and offer review methodology that accounts for the opportunity cost of a resource's [sic] participating in PJM as an energy-only resource. As explained above, an appropriate competitive offer includes all of the marginal and opportunity costs a resource faces to participate in the capacity market. A market seller's opportunity cost of participating as an energy-only resource reflects the seller's point of indifference between offering in the capacity market and participating as an energy-only resource. The opportunity cost facing a resource that would be profitable even absent capacity auction revenues [] is significant because it reflects the economic trade-off a rational

[6] *Comments of the Organization of PJM States, Inc*., Docket No. EL19-47-000, April 15, 2019 ("OPSI Comments"), at p.3.

[7] As P3 explained in its Protest and Comments, the IMM has not met its burden under FPA section 206 to demonstrate that using 30 PAHs to set the default MSOC is unjust and unreasonable. *See* P3 Protest and Comments, pp. 7-16.

> market seller considers when formulating its capacity market offer…. We therefore continue to find that consideration of opportunity cost in deriving a default offer cap and in reviewing sell offers above the default offer cap is just and reasonable because it is a legitimate consideration in formulating a competitive offer within the Capacity Performance design.[8]

As such, the Commission has found that considering opportunity costs when setting the default MSOC is just and reasonable, the D.C. Circuit Court agreed, and OPSI has not demonstrated otherwise.

In addition, OPSI has failed to demonstrate that its proposed remedy (i.e., use of the avoided costs of a particular resource class to set the default MSOC) would be just and reasonable. Rather, OPSI's approach would both be administratively burdensome and result in prolonged litigation over a significant number of market seller offers. Essentially, OSPI's proposed default MSOC assumes that there are no opportunity costs to assuming a capacity supply obligation. As explained above, both the Commission and the D.C. Circuit Court have found that this is not the case. As a result, any market seller that sought to include opportunity costs in its market seller offer would, under OPSI's proposal, be required to submit and justify a

[8] Capacity Performance Rehearing Order at P 185. *See also*, *Advanced Energy Mgmt.* pp. 673-674, where the D. C. Circuit found that:

> The penalties and bonuses create opportunity costs for resources with a capacity commitment. Say, for example, Resource A and Resource B can both produce 50 megawatts of power for a given emergency hour. Resource A has a 45 megawatt capacity commitment and Resource B does not have a capacity commitment. Resource A will receive bonusses for only 5 megawatt-hours. Resource B, on the other hand, will receive bonuses for all 50 megawatt-hours. If both resources can produce only 40 megawatts of power during the emergency hour, Resource A will owe a penalty for 5 megawatt-hours and receive no bonuses. But Resource B will still receive bonuses for all 40 megawatt-hours. Resource A has to earn enough in the capacity market to make up for these lost bonuses. The new default offer cap is set at this rate. The cap is the rate a resource needs in the capacity market to earn more with a capacity commitment than without. It is by definition a competitive offer for a low-cost resource.

unit-specific offer cap. Not only would that be administratively burdensome for market sellers, but it could also lead to prolonged discussions with the IMM concerning the appropriate level of opportunity costs for each specific unit. Reflecting the opportunity costs associated with forgone bonus payments in the default MSOC helps to alleviate these concerns, providing a reasonable representation of the minimum opportunity costs that all capacity market sellers face.

B. Breaking the Link Between the Default MSOC and Penalty Rate Will Not Incentivize Performance.

In their comments supporting the Complaint, both American Municipal Power ("AMP")[9] and the American Public Power Association ("APPA")[10] argue that no changes should be made to the existing penalty rate. According to AMP and APPA, increasing the penalty rate could encourage non-performance – in a Delivery Year when the actual number of PAH/PAIs exceeds the expected number of PAH/PAIs, a non-performing resource will reach its annual stop loss limit faster if it is subject to a higher penalty rate, after which point it will have no incentive to perform.[11] P3 disagrees that retaining the current value of expected number of PAH/PAIs used to calculate the penalty rate while decreasing the expected number of PAH/PAIs used to set the default MSOC will incentivize performance. In fact, the result would be quite the opposite.

First, the concern about the annual stop loss limit that AMP and APPA identify is not new to this proceeding; it is a feature of the existing Capacity Performance construct. If the number of PAH/PAIs are higher than expected under existing market rules, a non-performing resource that meets the annual stop loss limit will have no incentive to perform for the remainder

[9] *Comments of the American Municipal Power, Inc.*, Docket No. EL19-47-000, filed on April 15, 2019 ("AMP Comments"), at 8-9.

[10] *Motion to Intervene and Comments of the American Public Power Association*, Docket No. EL19-47-000, April 15, 2019 ("APPA Comments"), p. 9.

[11] *Id.*

of the Delivery Year. While a lower non-performance charge rate would reduce the likelihood that a resource will reach the stop loss limit if the number of PAH/PAIs exceed expectations, it would also encourage non-performing resources to assume capacity supply obligations in the first place, undermining the very purpose of Capacity Performance. On balance, then, it is more important to have a penalty rate that disincentivizes non-performing resources from assuming capacity supply obligations (in turn ensuring that the PJM capacity market procures sufficient capacity to serve the region's reliability needs) than to ensure that a particular non-performing resource never loses its incentive to perform by reaching its annual stop loss limit.

The Commission has acknowledged that the potential for a market participant's capacity revenues to become negative "provides an incentive for resource owners to make investments and maintain their resources to help mitigate the risk of nonperformance and helps ensure paying consumers receive commensurate reliability benefits."[12] If the expected number of PAH/PAIs is as low as the IMM, AMP, and APPA suggest, then it will be highly unlikely that any non-performing market participant will experience negative capacity market revenues if the number of PAH/PAIs used to calculate the non-performance rate is not increased.[13] Thus, rather than incentivizing non-performing resources to perform, retaining the existing non-performance charge rate would, in fact, encourage resources to take on capacity supply obligation but not make investments or maintain their resources to help mitigate the risk of non-performance. Therefore, the expected number of PAH/PAIs used to calculate both the default MSOC and penalty rate should remain linked.

[12] *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172, at P 70 (2014).

[13] Additionally, if the IMM's assessment of the likely number of PAI/PAHs is correct, then it is unlikely that there will be enough PAH/PAIs in a Delivery Year for the penalties that a non-performing resource incurs to reach the annual stop loss limit even if the penalty rate is increased, undercutting AMP's and APPA's concerns.

Finally, there are other ways to address AMP's and APPA's concerns about the annual stop loss limit disincentivizing performance besides maintaining the current penalty rate that would be less damaging to a fundamental design principle of Capacity Performance. Namely, the penalty rate should disincentivize resources from assuming a capacity supply obligation that they cannot satisfy. For example, Calpine, et al., suggest that the potential for the stop loss to discourage future performance can be addressed by permitting a supplier that has hit the stop loss limit to earn bonus credits by performing above the Balancing Ratio during any subsequent PAH/PAI, thereby providing an incentive for continued performance. Any additional revenues could be offset by penalties for future under-performance. Such a proposal would essentially reset the performance incentive after the stop loss limit had been reached, thus retaining the original incentives established by Capacity Performance.[14]

C. The IMM Lacks Express Authority to File the Instant Complaint

Contrary to the claims of the Office of the Ohio Consumers' Counsel ("Ohio Consumers' Counsel"), P3 submits that the IMM lacks express authority to file the instant complaint. In its comments in support of the Complaint,[15] the Ohio Consumers' Counsel argues that the IMM has the right to file it. Citing Section 105(d) of the Commission's Rules of Practice and Procedure, Ohio Consumers' Counsel suggests that as a corporation, the IMM is a "person" under section 206 of the Federal Power Act ("FPA") and thus has the right to file a complaint.[16] Moreover,

[14] *Comments of the Indicated Parties (*Calpine Corporation ("Calpine"), Vistra Energy Corp. and Dynegy Marketing and Trade, LLC (together, "Vistra"), and the Electric Power Supply Association ("ESPA") (collectively, the "Indicated Parties"), Docket No. EL19-47-000, dated April 15, 2019, at p. 17 and attached Affidavit of Roy J. Shanker, Ph.D., P 57 to P 59.

[15] *Office of the Ohio Consumers' Counsel, Comments in Support of the Independent Market Monitor's Complaint,* Docket No. EL19-47-000, April 12, 2019 ("Ohio Consumers' Counsel Comments").

[16] Ohio Consumers' Counsel Comments at pp. 2-3.

Ohio Consumers' Counsel contends that Order No. 719[17] explicitly recognized the right of the IMM to file a complaint.[18] Neither argument supports the proposition that the IMM has the authority to file the instant Complaint.

As P3 explained in its Protest and Comments,[19] the Commission's regulations and Attachment M of the PJM Open Access Transmission Tariff set forth the roles and responsibilities of the IMM, and neither grants the IMM the authority to file the instant Complaint. It is important to note that authority to file a complaint is different from the ability to participate in a proceeding. The Commission has recently noted that he IMM should have the ability to participate in proceedings under the Commission's rules at 18 C.F.R. § 385.214(b)(2) which allow the Commission to permit parties to participate in proceedings if, "The movant's participation is in the public interest."[20] However, the question before the Commission in this case is not about participation, but rather authority of the PJM IMM to bring a complaint against PJM that is not specifically authorized in Attachment M.

As a creature of the Commission's regulations, the IMM's authority is limited to the role that the Commission has outlined for it. That role does not include filing complaints to effectuate its preferred market rules; rather, it is limited to making "a *referral* to the Commission

[17] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

[18] Ohio Consumers' Counsel Comments at 3-4 (citing Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 332 and n.412).

[19] P3 Protest and Comments, pp. 2-7.

[20] 8 C.F.R. § 385.214(b)(2) (iii).

in all instances where the Market Monitoring Unit has reason to believe market design flaws exist that it believes could effectively be remedied by rule or tariff changes."[21]

Indeed, Attachment M affords the IMM narrow authority to file a complaint, it is only authorized to do so under in limited circumstances:

> In the event that a market participant determines to use an offer or cost input at a level or value that the Market Monitoring Unit has found to involve a potential exercise of market power, the Market Monitoring Unit may file a petition or initiate other regulatory proceedings addressing the issue. *If the potential exercise of market power is related to a Sell Offer submitted in an RPM Auction, the Market Monitoring Unit may file a complaint with the Commission addressing the issue*.[22]

Thus, Attachment M knows how to indicate a complaint is allowed and specifically indicated as much, but only for potential RPM Sell Offer issues. This specific allowance of IMM complaint authority in that limited circumstance, but not elsewhere, indicates that a broader complaint authority was not intended. Otherwise, Attachment M provides that "the [IMM] is to make a Referral to the Commission in all instances where the [IMM] has reason to believe market design flaws exist that it believes could effectively be remedied by rule or PJM Tariff changes."[23] This clear statement of the IMM limited referral authority related to market design issues would be would be unnecessary if complaints were intended beyond the limited situation noted in section IV.E-1 and Attachment M should not be construed in a way that would effectively read a provision out of the Attachment. Thus, neither the Commission's regulations nor the PJM Tariff authorize the IMM to file the Complaint.[24]

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[21] 18 CFR § 35.28(g)(3)(v) (emphasis added).

[22] *See* Tariff, Attachment M, Section IV.E-1 (emphasis added).

[23] *See* Tariff, Attachment M, Section IV.I.2.

[24] P3 acknowledges that the Commission has recently determined that Attachment M of PJM's Tariff permits the IMM to file a complaint against PJM regarding a Market Seller's Fuel Cost Policy. *PJM*

With respect to the Ohio Consumers' Counsel's argument that Order No. 719 explicitly recognizes the IMM's right to file complaints, the Commission's statements therein do not grant the IMM any authority beyond that conferred upon it under the Commission's regulations. In Order No. 719, the Commission listed the complaint process as only one avenue through which the IMM can address its concerns, so it can reasonably be read to apply only when the IMM is explicitly authorized to file complaints. Nowhere in the Commission's regulations is the IMM authorized to do so; however, as discussed above, Attachment M of the PJM Tariff authorizes the IMM to file a complaint under specific, limited circumstances (i.e., when the IMM has found that a specific market seller offer in the capacity market involves the potential exercise of market power). The Commission's statements in Order No. 719 should be read to apply only in circumstances such as this, where the Market Monitoring Unit is explicitly authorized under the relevant RTO's/ISO's tariff to file a complaint. Read together with the regulations that the Commission adopted in Order No. 719, they do not explicitly authorize the IMM to file complaints to effectuate market design changes.

III. CONCLUSION

For the foregoing reasons, P3 respectfully requests that the Commission consider this Motion for Leave to Answer and Answer and dismiss the IMM Complaint. In the alternative, P3

Interconnection, L.L.C., Order Conditionally Accepting Compliance Filings and Denying Motion for Clarification, 167 FERC ¶ 61,084, dated April 29, 2019 ("PJM Fuel Cost Order"), at PP 70 -76. However, P3 respectfully suggests that the Commission "did not reach [the] issue" of the IMM's "general right to file complaints under section 206 of the FPA." *Id.* at P 72. As the Commission did not consider the full interpretation of section E-1 in the context of the remainder of Attachment M, P3 submits that the issues contained herein (i.e., whether the IMM may bring a complaint regarding PJM's market rules on setting a PAH/PAI and whether opportunity costs can be included in offers and not mitigation) are distinguishable from the Tariff provisions dealing with fuel cost policies.

respectfully requests that the Commission consider P3's comments in issuing an order on the IMM Complaint.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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Dated May 2, 2019

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 2nd day of May, 2019.

Respectfully submitted,

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