

Association,⁴ the National Hydropower Association,⁵ the Nuclear Energy Institute,⁶ the PJM Power Providers Group,⁷ and Solar Energy Industries Association,⁸ (collectively, the “Trade Associations”) submit this protest to the March 24, 2023 complaint filed by the Independent Market Monitor for PJM (“Market Monitor”) against PJM Interconnection, L.L.C.⁹

⁴ EPSA is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization but not necessarily the views of any particular member with respect to any issue.

⁵ NHA is a non-profit national association dedicated to securing hydropower as a clean, carbon-free, renewable, and reliable energy source that provides power to an estimated 30 million Americans. Its membership consists of more than 300 organizations, including public and investor-owned utilities, independent power producers, equipment manufacturers, and professional organizations that provide legal, environmental, and engineering services to the hydropower industry. NHA promotes innovation and investment in all waterpower technologies, including conventional hydropower, marine and hydrokinetic power systems, and pumped storage hydropower to integrate other clean power sources, such as wind, solar, and clean hydrogen. The views and opinions expressed in this filing do not necessarily reflect the official position of each individual member of NHA.

⁶ NEI is the Washington, D.C.-based policy organization of the nuclear technologies industry. Its mission is to promote the use and growth of nuclear energy through efficient operations and effective policy. NEI has more than 300 members, including companies that own or operate nuclear power plants, reactor designers and advanced technology companies, architect and engineering firms, fuel suppliers and service companies, consulting services and manufacturing companies, companies involved in nuclear medicine and nuclear industrial applications, radionuclide and radiopharmaceutical companies, universities and research laboratories, labor unions, and international electric utilities.

⁷ The PJM Power Providers Group (“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 over 83,000 MWs of generation assets and produce enough power to supply over 63 million homes in the PJM region covering 13 states and the District of Columbia. The comments contained herein represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue. For more information on P3, visit www.p3powergroup.com. P3 timely submitted a doc-less Motion to Intervene on March 29, 2023.

⁸ The comments contained in this filing represent the position of SEIA as a trade organization on behalf of the solar industry, but do not necessarily reflect the views of any particular member with respect to any issue.

⁹ *Independent Market Monitor for PJM v. PJM*, Complaint of the Independent Market Monitor for PJM, Docket No. EL23-50-000 (filed March 24, 2023) (the “Complaint”).

I. PROTEST

A. The Market Monitor has not met its Section 206 burden.

As the complainant, the Market Monitor bears the burden of proof under section 206 of the Federal Power Act (“FPA”).¹⁰ However, the Complaint fails to demonstrate that “any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential.”¹¹ This creates two independent bases for the Commission to reject the Complaint on statutory grounds: First, because the Complaint does not even attempt to meet the statutory requirements, the Commission should reject it as patently deficient; second, because the Liaison Committee’s discussions do not affect rates, terms and conditions of service, the Commission should find that PJM’s administration of its own charter in this instance is not subject to Commission jurisdiction.

First, the Complaint does not advance an argument that the Market Monitor’s exclusion from the Liaison Committee creates unjust or unreasonable rates, undue discrimination or preference, or even a *risk* of violating these statutory requirements. Instead, the entirety of the Market Monitor’s brief argument is a bald assertion that PJM is violating Attachment M of its Open Access Transmission Tariff (“Tariff”) by not permitting the Market Monitor to participate

¹⁰ 16 USC 824e(b) (“In any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant.”). As this proceeding is pursuant to a complaint – not upon the Commission’s own motion – the burden lies with the Market Monitor.

¹¹ 16 U.S.C. § 824e(a) (2022).

in Liaison Committee meetings.¹² For this reason alone, the Commission should find that the Market Monitor has not met its burden of proof and reject the Complaint.

Second, the Commission has disclaimed jurisdiction over aspects of RTO/ISO proceedings that do not directly affect rates, terms and conditions of service. In 2019, in response to a complaint from a trade publication seeking access to ISO-NE's stakeholder proceedings, the Commission found:

The Commission has stated previously that “the stakeholder process within an RTO/ISO is a practice that affects the setting of rates, terms, and conditions of jurisdictional services of the type that the Supreme Court has held falls within the Commission's jurisdiction.” However, that statement of jurisdiction necessarily *is limited to aspects of an RTO/ISO stakeholder process that have a direct effect on jurisdictional rates.*¹³

In that decision, the Commission also found that second-guessing RTO/ISO decisions on meeting attendance for matters that did not *directly* affect jurisdictional rates would run afoul of precedent from the U.S. Court of Appeals for the District of Columbia Circuit that had found that the Commission lacked jurisdiction over an ISO's board composition.¹⁴

Here, the circumstances are comparable to those in the *NEPOOL* decision. As in *NEPOOL*, the policies at issue in the Complaint concern attendance at meetings where there is

¹² Complaint at 1.

¹³ *RTO Insider LLC v. New England Power Pool Participants Committee*, 167 FERC ¶ 61,021, P 47 (2019)(emphasis added) (“*NEPOOL*”).

¹⁴ *See id.* at P 51 (“Whereas the board selection practices under consideration in [*California Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 403 (D.C. Cir. 2004)] affected CAISO's governing decisions, here the contested NEPOOL policies do not reach that level of impact on ISO-NE decisions because they do not affect who may vote on NEPOOL proposals. Rather, the challenged NEPOOL policies here concern passive attendance at NEPOOL meetings by non-voting entities and dissemination of written accounts of NEPOOL deliberations. The contested attendance and reporting policies are too attenuated from NEPOOL's voting process to directly affect jurisdictional rates.”).

explicitly no voting and is “too attenuated from [the] voting process to directly affect jurisdictional rates.” Additionally, the purpose of the Liaison Committee’s meetings is to:

- Foster better communications between the PJM Board of Managers and the PJM Members;
- Ensure open exchanges and information sharing on topics of relevance to the Members and the Board of Managers to promote timely and adequate communications and informed decisions by the Board of Managers; and
- Allow members to understand board decisions.¹⁵

Nothing in the Committee’s charter directly affects rates. The Commission noted as much in accepting PJM’s compliance filings in response to Order No. 719, stating “PJM’s Liaison Committee operates as a stakeholder advisory committee to the Board and serves to foster better communications between the Board and PJM’s stakeholders.”¹⁶ The Commission also noted that general sessions would be open to all stakeholders, and would reflect discussions on topics developed jointly by PJM’s Liaison Committee and its Board.¹⁷ In short, the purpose and structure of the Liaison committee—discussed further below—also support the Commission rejecting the complaint based upon its *NEPOOL* reasoning.

B. The PJM Tariff does not provide the Market Monitor the right to participate in the Liaison Committee meetings.

The Market Monitor alleges PJM is violating Section IV.G of Attachment M to the Tariff.¹⁸ This provision states:

The Market Monitoring Unit may, as it deems appropriate or necessary to perform its functions under this Plan, participate (*consistent with the rules applicable to all PJM stakeholders*) in

¹⁵ Liaison Committee Charter at 2, <https://pjm.com/-/media/committees-groups/committees/lc/postings/charter.ashx> (“Charter”).

¹⁶ *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,071, P 41 (2010)

¹⁷ *Id.* at P 51.

¹⁸ Complaint at 2.

stakeholder working groups, committees, or other PJM stakeholder processes.¹⁹

According to the Market Monitor, the “Liaison Committee is a stakeholder committee,” and under Attachment M of the PJM Tariff, it has the right to register and participate.²⁰ The Market Monitor argues that “neither the Members Committee nor PJM has the authority to enforce a committee charter in violation of the OATT.”²¹

The Market Monitor alleges a Tariff violation where one does not exist. The Tariff says that while the Market Monitor may participate, it must adhere to the “rules applicable to all PJM stakeholders” and is not above them, even where they disallow participation. The Liaison Committee is meant to “...foster better communications between the PJM Board of Managers (“Board Members”) and the PJM Members...”²² The Liaison Committee, which is established by charter, not the Operating Agreement or Tariff, consists of three representatives from each of the five PJM Member industry sectors, as well as the Members Committee Chair and Vice Chair, who serves as the Liaison Committee Chair.²³

Only Board Members and Members of PJM may participate in the Liaison Committee. Under the PJM Tariff, a “Member” is either a Transmission Owner, Generation Owner, Other Supplier, Electric Distributor, or End-Use Customer.²⁴ The Market Monitor is none of those.

¹⁹ PJM, Intra-PJM Tariffs, OATT, Attach. M, § IV.G (emphasis added).

²⁰ Complaint at 2.

²¹ Complaint at 3.

²² Charter at 1; PJM Manual 34, PJM Stakeholder Process, 92 (Jan. 25, 2023).

²³ Charter at 2.

²⁴ PJM, Operating Agreement, Definitions (“‘Member’ shall mean an entity that satisfies the requirements of Operating Agreement, section 11.6 and that (i) is a member of the LLC immediately prior to the Effective Date, or (ii) has executed an Additional Member Agreement in the form set forth in Operating Agreement, Schedule 4.”) PJM, Operating Agreement, Section 11.6 (“To qualify as a Member, an Applicant shall: (i) Be a Transmission Owner, a Generation Owner, an Other Supplier, an Electric Distributor, or an End-Use Customer.”).

Because the Market Monitor is not a Member, it is barred from Liaison Committee participation. This prohibition does not violate the Tariff because the Tariff explicitly requires the Market Monitor to comply with the rules of each stakeholder group and committee.²⁵ The Commission should reject this Complaint as PJM is not violating its Tariff.

C. The Market Monitor’s participation in the Liaison Committee meetings would have a chilling effect on other members’ participation.

As a matter of principle, the Trade Associations support the active participation of the Market Monitor in PJM processes. The Market Monitor is an integral part of the operations of the PJM wholesale market. The Market Monitor is given broad latitude over many areas of the PJM markets, including participation in a wide-range of PJM’s stakeholder processes, to ensure the proper functioning of the PJM markets. However, the Market Monitor’s Complaint fails in its attempt to establish any violation of PJM’s governance rules or Tariff with respect to its claims to participate in the Liaison Committee meetings. Further, allowing such participation would have a significant adverse effect on, and chill, PJM Members’ “open exchanges and information sharing”²⁶ during these Liaison Committee discussions.

In particular, the Market Monitor’s Complaint proffers the same tenet as the recent complaint against PJM filed by the Public Service Commission of West Virginia,²⁷ in that PJM has

²⁵ See PJM, Intra-PJM Tariffs, OATT, Attach. M, § IV.G

²⁶ Charter at 1.

²⁷ *Pub. Serv. Comm’n of W.V. v. PJM Interconnection, L.L.C.*, Complaint of the Public Service Commission of West Virginia Regarding PJM Interconnection, L.L.C.’s Refusal to allow an Ex Officio State Commission Member to Observe and/or Attend PJM Liaison Committee Meetings, Docket No. EL23-45-000 (Mar. 8, 2023) (“PSC WV Complaint”).

allegedly violated its Tariff by not allowing the Market Monitor to participate in PJM’s Liaison Committee meetings. The Market Monitor states that:

Excluding the Market Monitor from stakeholder meetings compromises the ability of the Market Monitor to perform its function by depriving it of information exchanged in such meetings and the opportunity to state its independent views. The Market Monitor cannot effectively perform its function when it is excluded from stakeholder meetings. In addition, the Market Monitor has a direct interest in hearing communications and responding to communications from a Member or Members to the Board that concern the Market Monitor’s performance of the market monitoring function and the terms and conditions of its retention by PJM.²⁸

Exclusion of the Market Monitor from the Liaison Committee meetings does not deprive it of “the opportunity to state its independent views.” The Liaison Committee Charter provides that these meetings are intended to be a forum for Liaison Committee sector representatives *only* to communicate perspectives on issues directly to the Board. Other PJM Member attendees may attend in “listen-only” mode and are not permitted to provide responses to the Board. Not even PJM management is permitted to attend the Liaison Committee meetings with the exception of the PJM CEO, who is on the Board, and limited PJM support personnel.²⁹ Even if the Market Monitor were permitted to attend the meetings, it would not be permitted to “state its independent views” as it would only be attending in “listen-only” mode.³⁰ The Liaison Committee meetings are held on a quarterly basis and are scheduled for two hours for a total of eight hours annually—as compared to the thousands of hours annually on an aggregate basis of

²⁸ Complaint at 4.

²⁹ PJM Board Response to OPSI Letter Regarding April 3, 2023 Liaison Committee meeting at 2, March 29, 2023, available at <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20230329-pjm-board-response-to-opsi-letter-re-20230403-lc.ashx>.

³⁰ See Complaint at 3-4.

stakeholder meetings held through Standing or other committees, task force or other stakeholder groups, and workshops.

For similar reasons explained by PJM and other parties in response to the recent complaint filed by the Public Service Commission of West Virginia,³¹ PJM has not violated its Tariff, nor any of its rules, processes, or procedures by allowing PJM Members to meet periodically with the PJM Board outside of the purview of state regulatory commissions and the Market Monitor. There are no decisions on market rule changes or lobbying during these forums. Rather, the stated mission and goals of the Liaison Committee is to provide PJM Members with an opportunity to speak directly with the Board.³² As explained above, nothing in the Committee's charter directly affects rates.³³

The Market Monitor claims that it is “inconsistent with the independence of PJM, the PJM Board and the independence of the Market Monitor to exclude the Market Monitor from any stakeholder process.”³⁴ Again, the Market Monitor makes a claim without any evidence to substantiate its foundation. Further, this claim fails to recognize that the Liaison Committee exists in response to the goals of Order Nos. 2000 and 719.³⁵ Order No. 2000 established an ongoing obligation for RTOs to operate independent of any market participant or class of market

³¹ See Answer of PJM Interconnection, L.L.C., Docket No. EL23-45-000 (filed March 28, 2023) (“PJM Answer to PSC WV Complaint”); Comments of the PJM Power Providers Group, Docket No. EL23-45-000 (filed March 28, 2023); and, Indicated PJM Transmission Owners Comments Opposing Complaint, EL23-45-000 (filed March 28, 2023).

³² Charter at 1.

³³ See *infra* Section I.A.

³⁴ Complaint at 3.

³⁵ *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,071 (2010).

participants.³⁶ Order No. 719 built on this obligation by requiring RTOs to ensure their boards of directors are responsive to the needs of customers and stakeholders.³⁷ Taken together, these orders require RTOs to ensure that stakeholders have the tools to convey and receive information relevant to their concerns.³⁸ The Liaison Committee is the vehicle by which members can raise concerns directly with the Board.

Contrary to the Market Monitors assertion, exclusion from the Liaison Committee also does not “depriv[e] it of information exchanged in such meetings.”³⁹ While the Market Monitor does not participate in person during the Liaison Committee meetings, the agendas and related information for the Liaison Committee are posted and publicly available.⁴⁰ The Market Monitor, therefore, can follow up on any issue in its direct meetings with the PJM Board should it have any questions or request further information regarding Liaison Committee meetings or if it has any views on those topics it wishes to share with the PJM Board. Further, it should be emphasized that the Market Monitor already has unfettered access to PJM personnel and facilities⁴¹ and can access the Board when needed.⁴² Unlike the agenda for the Liaison

³⁶ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (“Order No. 2000”), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

³⁷ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071 (2008) (“Order No. 719”), *order on reh’g*, Order No. 719-A, 128 FERC ¶ 61,059 (2009), *order on reh’g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

³⁸ PJM Answer to PSC WV Complaint at 15.

³⁹ Complaint at 3-4.

⁴⁰ See PJM Liaison Committee page available [here](#).

⁴¹ Tariff, Attachment M, Section V.E.

⁴² Tariff, Attachment M, Section III.D.2 (“The PJM Board and the Market Monitor shall meet and confer from time to time on matters relevant to the discharge of the PJM Board’s and the Market Monitoring Unit’s duties under this Plan.”).

Committee, the communications between the Market Monitor and the Board are not publicly available.

Moreover, similar to not allowing state commissions to participate in the Liaison Committee meetings, arguably, the PJM Members have decided that the ability to have targeted communication and information sharing with the PJM Board would be compromised through a “chilling effect” if the Market Monitor was allowed to observe these discussions. Topics at the Liaison Committee would be limited, or not even raised for discussion, if the Market Monitor were allowed to participate in these meetings. For example, the Market Monitor appears particularly interested “in hearing communications . . . that concern the Market Monitor’s performance of the market monitoring function and the terms and conditions of its retention by PJM.”⁴³ However, the Market Monitor’s presence during such a conversation would stifle any conversation on these topics, if not undermine it completely. By prohibiting the Market Monitor from participating in Liaison Committee meetings, PJM is not violating its Tariff. Rather, the prohibition is the way by which PJM complies with Order Nos. 2000 and 719 and allows its Members to raise concerns directly, and openly, with the Board.

II. CONCLUSION

The Market Monitor’s Complaint has not met its burden pursuant to FPA section 206. The Market Monitor failed to demonstrate any violation by PJM of Commission precedent, its Tariff or Operating Agreement, or any applicable rules, laws and procedures, with respect to its stakeholder processes and, in particular, the conduct of its Liaison Committee. Accordingly, the Market Monitor’s request that the Commission direct PJM to permit the Market Monitor to fully

⁴³ Complaint at 4.

participate in Liaison Committee meetings should be denied and its Complaint should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing to be served upon each person designated on the official service list compiled by the Secretary in the captioned proceeding.

Dated at Washington, D.C. this 17th day of April, 2023.

/s/ Melissa Alfano _____