

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Independent Market Monitor for PJM)	
)	
v.)	
PJM Interconnection, L.L.C.)	Docket No. EL19-27-000
)	

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 (“FERC” or “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 Complaint of the Independent Market Monitor for PJM (“IMM Complaint”) filed on December

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

²P3 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 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.

28, 2018, against PJM Interconnection L.L.C. (“PJM”)³ and the Motion to Dismiss or, In the Alternative, Answer of PJM Interconnection, L.L.C. (“PJM Answer”) filed on January 25, 2019.⁴

I. Motion for Leave to Answer

Pursuant to 18 C.F.R. § 385.212 and 18 C.F.R. § 385.213, P3 respectfully submits this Motion for Leave to Answer and Answer to the IMM Complaint and PJM Answer.⁵ On January 10, 2019, P3 filed a doc-less Motion to Intervene in the above captioned proceeding. P3 respectfully submits this Answer to explain that the IMM Complaint should be dismissed, to comment on PJM’s Answer, and to request clarification on an open issue. P3 respectfully 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. P3 Agrees with PJM that the IMM has Authority to Raise Concerns Regarding Fuel Cost Policy Interpretation; However, that Authority Does Not Extend to Filing Complaints at the Commission.

P3 agrees with PJM that the IMM is fully authorized to communicate its concerns regarding Fuel Cost Policy interpretations.⁶ However, similarly to PJM, P3 objects to the IMM filing a Section 206 complaint against PJM to resolve a difference regarding a fuel cost policy

³ *Complaint of the Independent Market Monitor for PJM*, Independent Market Monitor for PJM v. PJM Interconnection, L.L.C, Docket No. EL19-27-000, December 28, 2018 (“IMM Complaint”).

⁴ Motion to Dismiss Or, In the Alternative, Answer of PJM Interconnection, L.L.C., PJM Interconnection, L.L.C., Docket No. EL19-27, January 25, 2019 (“PJM Answer”).

⁵ Although the Commission’s procedural rules do not provide for answers to comments as a matter of right, the Commission has allowed answers where, as here, the answer provides further explanation or otherwise helps ensure a full and complete record. See, e.g., *Empire Pipeline, Inc.*, 164 FERC ¶ 61,076 P 9 (2018), *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,154, at P 14 (2003), on reh’g, 109 FERC ¶ 61,236 (2004); *Williams Energy Mktg. & Trading Co. v. Southern Co. Servs., Inc.*, 104 FERC ¶61,141, at P 10 (2003); *Ameren Servs. Co.*, 100 FERC ¶ 61,135, at P 15 (2002), on reh’g, 103 FERC ¶ 61,178 (2003).

⁶ PJM Answer at p. 2.

interpretation. P3 explains further the reason for its objection and requests Commission clarification as described below.

III. The Commission Has Established the Role of the IMM Regarding the Approval of Fuel Cost Policies.

The IMM's Complaint raises questions about the role of the IMM that appear largely settled by the Commission against the IMM's view. In the February 2017 Fuel Cost Policy order⁷ FERC makes it clear that the IMM's role is to advise PJM and the market participant, but PJM makes the sole and final determinations regarding the approval of fuel policies.⁸ As the Commission stated two years ago, "...we reiterate our finding in the order that PJM has the final approval authority on Fuel Cost Policy."⁹

In this matter, FERC should clarify that PJM has the sole and final determination as to whether a market participant's offer is consistent with the Fuel Cost Policy that PJM has approved. The IMM can offer advice to PJM and the market participant, but should not be viewed as playing the same role as PJM. The Commission clearly has contemplated a role for the IMM regarding Fuel Cost Policies; however, the Commission has been equally clear that PJM is the sole entity with final approval authority over the approval of a policy and that exclusive authority should extend to interpretation of the approved policies.

If the IMM has a dispute with the tariff there is a way to address that concern. Under 18 CFR 35.28(g)(3)((ii)(A)(1), "The Market Monitoring Unit is not to effectuate its proposed

⁷ 158 FERC ¶ 61,133, Order on Proposed Tariff Provisions, Docket No. ER16-372-002, February 3, 2017 ("Fuel Cost Policy order").

⁸ Fuel Cost Policy order at P. 69.

⁹ *Id.*

market design itself.” To the extent IMM disagrees, it can “recommend proposed rule and tariff changes,”¹⁰ but under the rules the IMM is precluded from using this complaint mechanism¹¹ to “effectuate its proposed market design itself.”

IV. In the Event that PJM Misinterprets a Fuel Cost Policy, A Market Participant Should Not Be Exposed to Commission Action as a Result of PJM’s Error.

The Commission should not adopt PJM’s suggestion in its response to the complaint that the Commission should, “(a)ddress the PJM Market Monitor’s concerns through established Commission processes that enable Commission staff to commence enforcement activity or seek Section 206 actions or show cause orders.”¹² P3 agrees with PJM that the IMM should not file a complaint against PJM. However, P3 also believes that action against a market participant, either through an enforcement action or a Section 206 action would be inappropriate. The IMM appropriately has oversight of PJM’s administration of the tariff. This should not mean that the IMM is administering the tariff in parallel to PJM. To the extent that the IMM believes PJM is not administering its tariff accurately and consistent with Commission precedent, the IMM should report such instances to The Office of Enforcement or another organization within FERC and, if the Commission agrees with the IMM’s view, PJM should make prospective changes to its administration of the tariff. Importantly, however, the Commission should not retrospectively change a decision made by PJM. This is also the only practical way to administer the tariff. A market participant needs to be able to

¹⁰ 18 CFR 35.28(g)(3)(ii)(A).

¹¹ 18 CFR 35.28(g)(3)(iv) and (v).

¹² PJM Answer at p. 3.

rely on one entity to administer the tariff and there is simply not sufficient time to resolve differences between PJM and the IMM before a market participant needs to submit an offer. When a market participant has relied in good faith on PJM's judgment on the administration of its tariff, a market participant should not be exposed to an enforcement action if the Commission ultimately decides PJM inappropriately administered its tariff.

V. Clarification is Needed When PJM and the IMM Have a Dispute Over A Fuel Cost Policy.

The question about what to do when PJM and the IMM have a dispute over a fuel policy is still open. The Fuel Cost Policy order says that PJM should remove language that says the IMM and PJM should go to FERC Enforcement to resolve the dispute because any dispute is a question for the Commission to answer. The order states: “disputes are the province of the Commission and its Administrative Law Judges to address in response to a complaint when appropriate, or for its Administrative Dispute Resolution process to resolve outside of formal processes.”¹³ PJM requested clarification of this language in March 2017 and asked the Commission to clarify that “the ordering language should not be read to suggest that the IMM can initiate a complaint *against* PJM when it disagrees with a Fuel Cost Policy accepted by PJM, when PJM accepts an offer that the IMM believes is inconsistent with a Market Seller's Fuel Cost Policy, or when the IMM disagrees with PJM with respect to whether a penalty should be applied to a Market Seller's cost-based offer.”¹⁴ P3 would like an answer to this request for clarification and it should be as PJM would have it clarified.

¹³ Fuel Cost Policy order at P. 86.

¹⁴ PJM Interconnection, L.L.C., *Request for Rehearing*, Docket No. ER16-372-002, March 6, 2017, at p. 3.

VI. P3 Agrees That the Complaint Should be Denied if the Market Participant's Fuel Cost Policy was Accepted by PJM and Acted in Accordance With its Fuel Cost Policy, and Per PJM There Was No Market Impact or Harm.

While P3 cannot speak to the facts that gave rise to this complaint, P3 generally agrees with PJM that the IMM's complaint should be denied if the market participant's offer was developed in accordance with its PJM-approved fuel cost policy and there was no harm to the market. P3 believes that this two-prong test is an appropriate means of evaluating this and any future fuel cost violations.¹⁵ This commonsense standard should be endorsed in this proceeding which would then give all market participants confidence moving forward as to how their fuel cost policies will be evaluated by PJM.

VII. Conclusion

For the foregoing reasons, P3 respectfully requests that the Commission consider this Motion for Leave to Answer and Answer, and dismiss the IMM's Complaint and provide clarification on the open issue noted above.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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February 11, 2019

¹⁵ PJM Answer at pp. 19 – 20.

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 11th day of February, 2019.

Respectfully submitted,

On behalf of the PJM Power Providers Group

By: *Glen Thomas* _____

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