

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

Independent Market Monitor for PJM)	Docket No. EL19-47-001
v.)	
PJM Interconnection, LLC;)	
)	
Office of the People’s Counsel for District of Columbia)	Docket No. EL19-63-001
Delaware Division of the Public Advocate)	Not Consolidated
Citizens Utility Board)	
Indiana Office of Utility Consumer Counselor)	
Maryland Office of People’s Counsel)	
Pennsylvania Office of Consumer Advocate)	
West Virginia Consumer Advocate Division)	
PJM Industrial Customer Coalition)	
v.)	
PJM Interconnection, LLC)	

**PJM POWER PROVIDERS GROUP ANSWER AND
ALTERNATIVE MOTION FOR LEAVE TO RESPOND AND RESPONSE**

Pursuant to 18 C.F.R. § 385.212 and 18 C.F.R. § 385.213, the PJM Power Providers Group (“P3”)¹ respectfully submits this Motion for Leave to Answer and Answer in response to the April 19, 2021 answer² of the Independent Market Monitor for PJM (“IMM”) regarding P3’s April 8, 2021 Request for Expedited Clarification or, in the Alternative, Rehearing³ of the Federal Energy

¹ 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 67,000 MWs of generation assets, produce enough power to supply over 50 million homes 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.

² Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM, Docket No. EL19-47-001; Docket No. EL19-63-001 (not consolidated) (April 19, 2021) (“IMM Answer”).

³ Request for Expedited Clarification or, in the Alternative, Rehearing of PJM Power Providers Group, Docket No. Docket No. EL19-47-001; Docket No. EL19-63-001 (not consolidated) (April 8, 2021) (“P3 Request for Clarification/Rehearing”).

Regulatory Commission’s (“FERC” or the “Commission”) March 18, 2021 order in the above-captioned proceeding.⁴ The Commission should reject the IMM’s Answer. Rule 713(d)(1) of the Commission’s Rules of Practice and Procedure prohibits an answer to a request for rehearing.⁵ Moreover, contrary to the IMM’s assertions, the IMM Answer neither clarifies any issue in this proceeding nor assists in creating a complete record. Rather, the IMM misconstrues P3’s filing, takes P3’s positions in its Request for Clarification/Rehearing out of context and fails to offer any legal analysis, “clarification,” or “assistance” with respect to the tariff provisions in question. Instead, the IMM offers its opinion regarding what the Commission might have meant in the Commission’s March 18 Order. For all of these reasons, the Commission should reject the IMM’s Answer.⁶

In the event that the Commission does not reject the IMM’s Answer, P3 alternatively requests authorization under Rule 213(a)(2) to submit this response, which addresses the factually inaccurate ascription of P3’s Request for Clarification/Rehearing and other irrelevant claims made in the IMM’s Answer. The Commission will find good cause to accept a response to an answer where it will aid the Commission’s decision-making process, clarify the issues before the Commission, or ensure a complete record in the proceeding.⁷

⁴ *Independent Market Monitor for PJM v. PJM Interconnection, LLC, et al.*, 174 FERC ¶ 61,212 (2021) (“March 18 Order” or “Order”).

⁵ 18 C.F.R. § 385.713(d)(1). *Order Addressing Arguments Raised On Rehearing, And Setting Aside Prior Order, In Part*, 173 FERC ¶ 61,154 (2020), P 14.

⁶ *N. Nat. Gas Co.*, 106 FERC ¶ 61,195, at 10 (2004) (“The Commission’s [rules] generally prohibit answers to protests. . . . Therefore, we reject Northern’s answer as it contains no significant additional information and does not assist the Commission in its understanding of any of the issues.”).

⁷ 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).

I. RESPONSE

A. The IMM Misconstrues P3's Request for Clarification/Rehearing Regarding The Market Seller Offer Cap And Otherwise Fails To Offer Any Legal Or Practical Guidance To Address P3's Request.

P3's Request for Clarification/Rehearing sought, in part, expedited clarification from the Commission that its March 18 Order, while finding that the PJM Interconnection, L.L.C.'s ("PJM") Market Seller Offer Cap ("MSOC") methodology to determine the default offer cap was no longer just in reasonable, did not otherwise invalidate other portions of PJM's Tariff, including PJM Tariff, Attachment DD, § 6.4 ("Sec. 6.4"). Sec. 6.4 provides, in relevant part, that "the submission of a Sell Offer with an Offer Price at or below the revised Market Seller Offer Cap permitted under this proviso shall not, in and of itself, be deemed an exercise of market power in the RPM market." P3 sought clarification that Capacity Performance Resources can rely on this currently effective Tariff language as a safe harbor while the market awaits the resolution of this proceeding and the development of a new MSOC.

The IMM's Answer offers no legal or practical answer to P3's inquiry as to whether or not the Commission meant to invalidate Sec. 6.4 when it otherwise found that the default offer cap described in PJM's Tariff is "incorrectly calibrated such that it may unjustly and unreasonably prevent the appropriate review of offers. . . ."⁸ Rather, the IMM merely ascribes an unfounded assertion that P3 was somehow seeking a "safe harbor for anticompetitive behavior."⁹ P3 clearly did not – and is not – seeking such protection. Nor did P3 assert, or imply, that the Commission has not found that market power can be exercised through offers that are below the current MSOC but above the competitive offer at a capacity resource.¹⁰ The IMM's Answer misconstrues P3's

⁸ March 18 Order, P 65.

⁹ IMM Answer, p. 2.

¹⁰ *Id.*

valid request for clarification or rehearing on this issue and therefore offers nothing to aid the Commission's decision-making process or clarify the issue arising from what the Commission's March 18 Order intended with respect to section 6.4. As such, the IMM's Answer in this regard should be rejected.

B. The IMM Misconstrues P3's Request for Clarification/Rehearing Regarding The Undefined Term "Anticompetitive Conduct" In the Commission's March 18 Order.

In P3's Request for Clarification/Rehearing, P3 requested clarification that the Commission neither changed nor reinterpreted the scope of its enforcement authority to include undefined "anticompetitive behavior." P3's full explanation for this request is stated as follows:

As discussed above, the Commission stated that it would "take all measures necessary and appropriate to address anticompetitive conduct" in the upcoming auction.¹¹ The Federal Power Act ("FPA")¹² and the Commission's regulations¹³ limit enforcement actions to those actions that involve allegations of a tariff violation, or allegations of market manipulation (including fraud), or a violation of market behavior rules – both of which are codified in the Commission's regulations. Not only are such expressly prohibited behaviors codified in the Commission's regulations, but the Commission has also provided detailed guidance on how it views and will enforce those regulations through policy statements and published precedent.¹⁴ Simply stated, there is nothing in the FPA or in the Commission's regulations that defines "anticompetitive behavior." Anticompetitive conduct also is not expressly noted as an element of market manipulation, fraud, or any market behavior rule. Therefore, P3 urges the Commission to clarify that it has neither changed nor reinterpreted the scope of its enforcement authority to include undefined "anticompetitive behavior."¹⁵

¹¹ March 18 Order at P 73.

¹² 16 U.S.C. § 824v.

¹³ See 18 C.F.R. §§ 385.1c.1 (prohibition of natural gas market manipulation), 1.c.2 (prohibition of electric energy market manipulation) and 35.41 (market behavior rules).

¹⁴ See, e.g., *Revised Policy Statement on Enforcement*, 123 FERC ¶ 61,156 (2008).

¹⁵ P3 Request for Rehearing/Clarification, p. 4.

Per the IMM's Answer, the IMM stated that "[I]n requesting clarification or in the alternative, rehearing of the MSOC Order, Power Providers are requesting that the exercise of market power in the May auction be ignored because Power Providers assert that they do not know what anticompetitive behavior is and therefore will not be able to determine whether their behavior is anticompetitive prior to the submission of offers for the May auction."¹⁶ We respectfully but forcefully disagree with this characterization.

Nowhere does P3 request "that the exercise of market power in the May auction be ignored." Nor does P3 "assert" that "they do not know what anticompetitive behavior is." Rather, it is a fact that the FPA does not define "anticompetitive behavior" and neither Section 1c.2¹⁷ nor Section 35.41¹⁸ reference the word "anticompetitive." In other words, the Commission's remit is to address actual market manipulation under Section 1c.2, violation of delineated market behavior rules under Section 35.41, and to address violations of specific tariff provisions. As such, P3 fairly seeks Commission clarification that the "anticompetitive conduct" that it plans to "address" is not a reinterpretation of expansion of the Commission's statutory and regulatory enforcement ambit.

The IMM's characterizations of P3's request aside, the IMM has again offered no legal and practical insight or clarification with respect to P3's request for clarification.

P3 seeks *the Commission's* intent and interpretation of its March 18 Order on PJM's tariff provisions affecting the MSOC – not the IMM's. How the IMM reviews offers in each capacity market auction was not the focus of P3's filing. Whether or not the Commission intended to introduce a new standard for enforcement actions regarding the MSOC is, and was, the focus of

¹⁶ IMM Answer, pp. 2-3 (emphasis added).

¹⁷ 18 C.F.R. § 1c2 (2019).

¹⁸ 18 C.F.R. § 35.41 (2019).

this aspect of P3's Request for Clarification/Rehearing. For all of these reasons, the IMM's Answer in this regard should be rejected.

II. CONCLUSION

For the foregoing reasons, P3 respectfully requests that the Commission reject the IMM's Answer, or, in the alternative, grant P3's motion for leave to respond, and grant P3's April 8 request for clarification or in the alternative, rehearing.

Respectfully submitted,

By: Glen Thomas _____

Glen Thomas

Laura Chappelle

GT Power Group

101 Lindenwood Drive, Suite 225

Malvern, PA 19355

gthomas@gtpowergroup.com

610-768-8080

April 23, 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 of the Commission in this proceeding.

Dated at Washington, D.C., this 23rd day of April, 2021.

By: Laura Chappelle _____
Laura Chappelle
GT Power Group
101 Lindenwood Drive, Suite 225
Malvern, PA 19355
gthomas@gtpowergroup.com
610-768-8080