

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

Independent Market Monitor for PJM)	Docket No. EL19-47-000
v.)	
PJM Interconnection, LLC;)	
)	
Office of the People’s Counsel for District of Columbia)	Docket No. EL19-63-000
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)	

**MOTION FOR EXPEDITED RELIEF OF THE
PJM POWER PROVIDERS GROUP**

Pursuant to the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) order issued on March 18, 2021, in the above-captioned proceedings,¹ and Rule 212 of the Commission’s Rules of Practice and Procedure,² the PJM Power Providers Group (“P3”)³ respectfully submits this motion for expedited relief regarding the appropriate remedy to the

¹ *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*, 174 FERC ¶ 61,212 (2021), (“March 18 Order”).

² 18 C.F.R. § 385.212.

³ 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 capacity resources 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.

complaints filed by the Independent Market Monitor for PJM Interconnection, L.L.C. (“IMM”) and Joint Consumer Advocates⁴ against PJM Interconnection, L.L.C. (“PJM”). For the reasons stated more fully herein, P3 respectfully requests that if the Commission does not order a replacement rate for the default Market Seller Offer Cap (“MSOC”) by July 27, 2021, as further described herein, the Commission grant expedited relief for the upcoming Base Residual Auction (“BRA”), which is associated with the 2023/2024 Delivery Year, similar to the relief granted by the Commission in its March 18 Order. Specifically, P3 respectfully requests that the Commission find that PJM’s upcoming BRA should go forward as scheduled utilizing the same MSOC tariff provisions in place for the May 2021 Base Residual Auction, as suggested by PJM in its June 9, 2021, Reply Brief.⁵ Given the lack of clarity regarding the MSOC, the remedy fashioned by the Commission in its March 18 Order (running the auction under the prior MSOC rules) should continue to apply until an appropriate replacement rate is authorized.

I. BACKGROUND

On February 21, 2019, the IMM filed a complaint⁶ with the Commission alleging that certain provisions of PJM’s Open Access Transmission Tariff (“Tariff”) regarding the calculation of the default MSOC in PJM’s capacity market are unjust and unreasonable. On April 15, 2019, the JCA submitted a complaint⁷ requesting similar relief (collectively, the “Complaints”).

⁴ The Joint Consumer Advocates for purposes of this proceeding include: the Office of People’s Counsel for the District of Columbia, Delaware Division of the Public Advocate, 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, and PJM Industrial Customer Coalition.

⁵ *Reply Brief of PJM Interconnection, L.L.C.*, Docket Nos. EL19-47; EL19-63 (not consolidated), dated June 9, 2021, pp. 3-4 (emphasis added; citations omitted) (“PJM Reply Brief”).

⁶ *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*, Complaint of the Independent Market Monitor for PJM, Docket No. EL19-47-000 (Feb. 21, 2019) (“IMM Complaint”).

⁷ *Joint Consumer Advocates v. PJM Interconnection, L.L.C.*, Complaint of the Joint Consumer Advocates, Docket No. EL19-63-000 (April 15, 2019) (“JCA Complaint”).

In its answers to both Complaints, PJM requested that if the Commission took any action on the MSOC, it should ensure that sellers have sufficient time to submit data prior to the next auction. Thus, on May 3, 2019, PJM filed an Answer to the JCA Complaint stating, in part, that:

. . . in the event the Commission finds it necessary to institute a replacement rate, it should exercise remedial discretion and apply any replacement rate prospectively after the upcoming Base Residual Auction (“BRA”) for the 2022/2023 Delivery Year. There is no need to delay the BRA until a replacement default MSOC is implemented as any concerns regarding market uncertainty can be addressed by the Commission confirming that it will not require PJM to rerun the results of the upcoming BRA.⁸

Similarly, in its April 9, 2019, Answer to the IMM’s Complaint, PJM stated that:

In the event the Commission finds it necessary to implement a replacement rate, it should exercise its broad remedial discretion in instituting such a replacement. Specifically, the Commission should ensure that Capacity Market Sellers will still be able to submit unit-specific MSOC data and provide PJM and the Market Monitor with sufficient time to review such submissions. This includes potentially not applying the replacement rate to the upcoming BRA for the 2022/2023 Delivery Year. Such a course of action is prudent given that the existing deadline for Capacity Market Sellers to submit unit-specific MSOC by April 16, 2019, 120 days prior to the commencement of the upcoming BRA. Since answers to the Market Monitor’s Complaint are not due until April 15, 2019, Capacity Market Sellers will not know whether the existing default Market Seller Offer Cap is still valid until after this date. Thus, Capacity Market Sellers are not currently in a position to know with any certainty whether they would be required to submit unit-specific MSOC data by the existing April 16 deadline. To ensure an orderly administration of the all RPM auctions, PJM requests that any replacement rate include a sufficient timeline that allows Capacity Market Sellers to submit unit-specific MSOC data prior to the relevant RPM Auction that such replacement rate becomes effective.⁹

In the Commission’s March 18 Order, the Commission found that while it was granting the Complaints and finding that the existing rate was unjust and unreasonable, it also concluded

⁸ *Answer of PJM Interconnection, L.L.C.*, Docket No. EL19-63, dated April 15, 2019, pp. 6; 8 (emphasis added; citations omitted).

⁹ *Answer of PJM Interconnection, L.L.C.*, Docket No. EL19-47, dated April 9, 2019, pp. 21-22 (emphasis added; citations omitted).

that additional record evidence was needed to set the appropriate replacement rate.¹⁰ Importantly, the Commission recognized that time was of the essence in terms of market sellers' deadlines to submit data for the upcoming auction. Therefore, the Commission affirmatively found that the May 2021 capacity auction should not be delayed and that the previously used MSOC would be in effect until a replacement rate was adopted. In this regard, the Commission found that:

We recognize that PJM's capacity auction for the 2022-2023 delivery year is scheduled for May 2021. In light of the imminent start of the delivery year and the two-year delay that the auction already has encountered, we conclude that the auction should go forward as scheduled under the current rules. As the courts have repeatedly explained, the Commission's discretion is at its zenith when fashioning remedies, and we find it to be an appropriate and equitable exercise of that discretion not to further delay the upcoming auction while the Commission determines the just and reasonable replacement rate.^{11 12}

PJM's 2022/2023 BRA ran on schedule from May 12-25, 2021. This was the first auction run by PJM since the May 2019 BRA and clearing prices were at historically low levels – well below any mandated offer caps.¹³

The briefing schedule in the MSOC Complaint cases continued in May and June, 2021, with interested parties filing initial briefs on May 3, 2021, and reply briefs on June 9, 2021. In PJM's June 9, 2021, reply brief, PJM again stressed the important timeline for any decision on the MSOC given the impending December 2021 BRA:

¹⁰ March 18 Order, P 71.

¹¹ *Pub. Utils. Comm'n of Cal. v. FERC*, 988 F.2d 154, 163 (D.C. Cir. 1993) (quoting *Towns of Concord, Norwood, & Wellesley v. FERC*, 955 F.2d 67, 76 (D.C. Cir. 1992)). See also *Aera Energy LLC v. FERC*, 789 F.3d 184 (D.C. Cir. 2015) (the Commission must fix a just and reasonable replacement rate before a proceeding under section 5 of the NGA or section 206 of the FPA takes effect).

¹² March 18 Order, P 73.

¹³ See, <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2022-2023/2022-2023-base-residual-auction-report.ashx>

To ensure that the upcoming December BRA is not further delayed, the Commission should issue a clear order that sets a replacement default MSOC by July 2, 2021. This is essential given that the unit-specific requests are due 120 days prior to the conduct of the RPM Auction. Under the existing schedule, Capacity Market Sellers are required to submit requests for a unit-specific MSOC no later than August 3, 2021. To determine whether a unit-specific MSOC request is needed, Capacity Market Sellers will need to know what the default MSOC is prior to that deadline. As a result, the Commission should issue an order with finality on the replacement default MSOC by July 2, 2021 so that Capacity Market Sellers know what the default MSOC will be sufficiently prior to the unit-specific MSOC deadline. In this way, PJM and Capacity Market Sellers can proceed with the unit-specific review process knowing what the replacement MSOC will be in advance of the unit-specific submission deadline.

While PJM prefers that a replacement default MSOC be established by July 2, 2021, to the extent the Commission does not issue an order prior to the August 3, 2021 deadline for Capacity Market Sellers to request a unit-specific MSOC, the Commission should allow PJM to proceed with the December BRA as currently scheduled under the existing rules to avoid further delay of the auction just as the Commission concluded in its most recent order with respect to the BRA associated with the 2022/2023 Delivery Year. Further delaying the upcoming December BRA undermines the importance of sending price signals sufficiently in advance of the Delivery Year. Given that the Commission's discretion is at its zenith when fashioning remedies, it should not further delay the upcoming December auction in establishing a replacement MSOC. As with any RPM Auction, should any anticompetitive conduct be observed during the conduct of the December BRA, PJM or the Market Monitor may refer such offending Capacity Market Seller to the Commission's Office of Enforcement.¹⁴

On July 16, 2021, PJM filed a request for prospective waiver of certain pre-auction deadlines affected by the default BRA.¹⁵ Specifically PJM has requested that waivers be allowed for must-offer exception requests, currently due by July 19, 2021, as well as unit-specific offer cap requests, due by August 3, 2021. PJM states, in part, that “[B]oth of these dates are rapidly approaching and it is unclear when a replacement MSOC will be

¹⁴ PJM Reply Brief, pp. 3-4 (emphasis added).

¹⁵ *Request of PJM Interconnection, L.L.C. for Prospective Waiver of Certain Pre-Auction Deadlines Affected By The Default Market Seller Offer Cap*, Docket No. EL21-2444, dated July 16, 2021 (“PJM BRA Waiver Request”). P3 has filed a timely doc-less motion to intervene in this proceeding and intends to support PJM's BRA Waiver Request on or before the Commission's August 6, 2021, deadline for comments.

established at this time. This waiver is needed because . . . certain decisions required of Capacity Market Sellers within the existing pre-auction deadlines are dependent on the Commission’s yet-to-be issued Order on a replacement MSOC.”¹⁶

II. MOTION FOR EXPEDITED RELIEF

Without knowing the offer cap rules in place for the December auction, Capacity Market Sellers will not know whether seeking must offer exceptions or unit-specific reviews are necessary or appropriate. For instance, with respect to unit-specific review requests, Capacity Market Sellers will need to consider the effort needed to support a unit-specific request once it has been submitted when the Capacity Market Seller believes its cost is above the default offer cap by a relatively small amount. It will take some time for Capacity Market Sellers to process these considerations after the Commission issues an order. In addition, PJM, the IMM, and Capacity Market Sellers will all need some time to review the Commission order to understand the Commission’s view on a variety of implementation issues raised in comments.

To the extent that the Commission has not yet found an appropriate replacement rate by July 27, 2021, P3 respectfully requests that the Commission adopt PJM’s recommendation to allow PJM to proceed with the December BRA as currently scheduled under the most recent MSOC rules to avoid further delay of the auction, just as the Commission found acceptable in its March 18 Order that allowed PJM to conduct the most recent May BRA for the 2022/2023 Delivery Year. P3 strongly agrees with PJM that “[F]urther delaying the upcoming December BRA undermines the importance of sending price signals sufficiently in advance of the Delivery Year.”¹⁷ P3 submits that it is an equally “appropriate and equitable exercise of [the Commission’s] discretion not to

¹⁶ *Id.*, p. 3.

¹⁷ PJM Reply Brief, p. 4.

further delay the upcoming auction while the Commission determines the just and reasonable replacement rate.”¹⁸ P3 believes Capacity Market Sellers will need no less than one week to process the Commission order ahead of the August 3, 2021 deadline to submit unit-specific offer cap requests.

III. CONCLUSION

For the foregoing reasons, P3 respectfully requests that the Commission accept its motion for expedited relief and if a final order detailing a replacement rate for the MSOC is not issued by July 27, 2021, that the Commission allow the upcoming December 2021 BRA to occur under the MSOC rules in effect for the May 2021 auction.

P3 strongly urges the Commission to ensure that the next BRA (associated with the 2023/2024 Delivery Year), which is currently scheduled to begin on December 1, 2021, will not be further delayed as a result of this proceeding.

Respectfully submitted,

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¹⁸ March 18 Order, P 73.

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 22nd day of July, 2021.

On behalf of the PJM Power Providers Group

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