UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

PROTEST AND COMMENTS OF THE PJM POWER PROVIDERS GROUP

Pursuant to Rules 211 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 protest and comments in response to the complaint of the Independent Market Monitor ("IMM") for PJM ("IMM Complaint" or "Complaint"), filed on February 21, 2019, against PJM Interconnection L.L.C. ("PJM").[3] The IMM's Complaint against PJM requests that the Commission direct PJM to revise the expected number of Performance Assessment Intervals ("PAI"), formerly known as performance assessment hours ("PAH"), used to set the

[1] 18 C.F.R. §§ 385.211 and 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] *Complaint of the Independent Market Monitor for PJM*, Independent Market Monitor for PJM v. PJM Interconnection, L.L.C, Docket No. EL19-47-000, February 21, 2019 ("IMM Complaint").

default Market Seller Offer Cap ("MSOC") in Reliability Pricing Model ("RPM") auctions to a level consistent with a reasonable and supportable expectation of PAI.

On February 25, 2019, the Commission issued a Notice of Complaint setting March 13, 2019, as the deadline to intervene or protest the filing. 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. On March 8, 2019, P3 filed a Motion for Extension of Time on Comment Day, and on March 12, 2019, the Commission issued a Notice of Extension of Time granting the extension and extending the comment deadline to April 15, 2019. As more fully explained below, P3 respectfully requests that the IMM Complaint be dismissed. If the Commission does not dismiss the IMM Complaint, P3 respectfully requests that the Commission consider P3's comments contained herein for any order on the Complaint.

I. PROTEST

A. The IMM Complaint Should Be Dismissed Because The IMM Does Not Have Authority To Bring the Complaint.

The IMM Complaint should be dismissed because the IMM does not have authority to bring complaints against PJM. Neither the Commission's rules nor the PJM Open Access Transmission Tariff ("Tariff") grant the IMM the authority to file the Complaint. PJM has argued this in a number of proceedings that have come before the Commission.[4]

The IMM has no authority to file a complaint with the Commission under Federal Power Act ("FPA") section 206, other than the authority granted to it under the Commission's regulations

[4] *See, e.g., Independent Market Monitor for PJM v. PJM Interconnection, L.L.* C., Motion to Dismiss or, in the Alternative, Answer of PJM Interconnection, L.L.C. at pp 3-8, Docket No. EL19-27 (Jan. 25, 2019); *Motion to Dismiss or, in the Alternative, Answer of PJM Interconnection, L.L.C*. at pp 1-3, Docket No. EL17-82 (Aug. 21, 2017); *Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C. to Answer of Potomac Economics, Ltd*. at pp 2-4, Docket No. EL17-62 (Jun. 20, 2017).

and PJM's Tariff. Consistent with Order No. 2000, the IMM implements PJM's market monitoring function; it has no legally recognized status distinct from that of PJM and, in fact, reports to the PJM Board.[5] A recent decision in the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit Court"), in which the court denied the IMM's motion to intervene in a case reviewing a Commission order denying a waiver of certain PJM market rules, supports this conclusion.[6] Absent a provision in PJM's Tariff that explicitly authorizes the IMM to file a complaint concerning the number of PAIs used to calculate the default offer cap, the IMM has no right under FPA section 206 to file the instant Complaint in its role as the market monitor.

Neither the Commission's regulations nor PJM's Tariff grant the IMM the authority to file a complaint with respect to the market rules at issue in this proceeding. Market monitors were established to monitor markets for violations of tariffs and market rules. This structure is reflected in Order No. 719 and its implementing regulations. Specifically, FERC's regulations list the three core market monitoring functions: (i) evaluate market rules and "recommend" proposed changes; (ii) review and report on market performance; and, (iii) identify and report to Commission enforcement staff any potential market violations.[7] With respect to rule changes, the Commission regulations only contemplate "recommendations" from the market monitor and focus on situations

[5] *See Regional Transmission Organizations*, Order No. 2000, 1996-2000 FERC Stats & Regs., Regs. Preambles ¶ 31,089, at 31,146 (1999) (describing market monitoring as a function of an independent system operator), *order on reh'g*, Order No. 2000-A, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,092 (2000), *petitions for review dismissed sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001); *see also* 18 C.F.R. § 35.28(g)(3)(i)(D) ("The Market Monitoring Unit must report to the Commission-approved independent system operator's or regional transmission organization's board of directors.").

[6] *See Old Dominion Electric Cooperative v. FERC*, 892 F.3d 1223 (D.C. Cir. 2018) ("*ODEC*"). In *ODEC*, the court found that "[beyond] its contractually assigned tasks, the [IMM] has no independent legal interest of its own in the PJM markets," further noting that "its function is limited to monitoring, advising, encouraging compliance, and informing others through regulatory filings and other informal communications." *Id*. at 1238, 1240.

[7] 18 CFR § 35.28(g)(3)(ii).

where the recommended market design change addresses a vulnerability that, if known publicly, could result in exploitation.[8] Indeed, the Commission's regulations provide that "[a] Market Monitoring Unit is to make a *referral* to the Commission 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."[9] The regulations further admonish that the market monitor "is not to effectuate its proposed market design itself."[10] In addition, RTO/ISOs "may not permit [market monitors] . . . to participate in the administration of the . . . tariff" other than prospective mitigation.[11] By comparison, the RTO/ISO is the independent entity the Commission has authorized to administer the market including developing market rules/changes, seeking approval of market rule changes through the stakeholder process and at FERC, and effectuating its market design.[12]

Furthermore, Attachment M of the PJM Tariff parallels these Commission regulations, similarly limiting the IMM's authority to bring a complaint to effectuate rule changes. For example, in setting forth the IMM's responsibilities with respect to market rules, tariff and market design, the Tariff is clear: "PJM is responsible for proposing for approval by the Commission. . .

[8] *Id*. at §§ 35.28(g)(3)(ii)(A)(2) and 35.28(g)(3)(vi).

[9] *Id*. at § 35.28(g)(3)(v) (emphasis added).

[10] *Id*. at § 35.28(g)(3)(ii)(A)(2).

[11] *Id. at § 35.28(g)(3)(iii)(A); see also Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281, at PP 356, 357 (2008) ("we decline to adopt [the suggestion that Market Monitoring Units should be responsible for a] fourth function of assessing whether RTO or ISO benefits flow to customers…. We agree that the [Market Monitoring Unit's] role in recommending proposed rule and tariff changes is advisory in nature, and that the [Market Monitoring Unit] should not become involved in implementing rule and tariff changes."), *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); *see also ODEC*, 892 F.3d at 1238 (describing the PJM IMM's function as "largely confined to observing the market's operations and then offering recommendations to PJM").

[12] *See* Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 357 ("the filing of proposed rule and tariff changes, and the implementation of rule and tariff changes, are within the purview of the RTO or ISO.").

changes to the PJM Market rules" while the IMM, on the other hand, "shall not effectuate its proposed market design since that is the responsibility of the Office of the Interconnection." Instead the Tariff limits the IMM to "recommend changes to . . .the staff of the Commission's Office of Energy Market Regulation, State Commissions and the PJM Board."[13] Similarly, "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."[14] There is simply no authority in the Tariff for the IMM to file a complaint to change PJM market rules.

This division of responsibility between PJM and the IMM is a sensible one for several reasons. First, it ensures an efficient use of resources - having PJM focus on administering and running the market, while the IMM polices the market, minimizes duplication of functions. Second, this clear delineation of responsibilities avoids confusion among the stakeholder community when issues for deliberation arise: PJM has the lead in the development and implementation of market rules and the IMM has the lead in enforcement processes. That is not to say that the separation of functions is absolute – for example, while the market monitor would be able to recommend rule changes, it would remain PJM's responsibility to consider that

[13] PJM Tariff, Attachment M, section D.

[14] PJM Tariff, Attachment M, section I.2. PJM noted the IMM's referral authority in response to the IMM's criticism of the results of the 2021/2022 Base Residual Auction: During the weeks where actual offers are submitted and the auction is cleared, the IMM has full visibility into all data relevant to the auction, including resource offers. If the IMM believed that economic withholding was taking place based on submitted offers and preliminary auction clearing results, the IMM could have consulted with the asset owner during that time period. If the IMM believes that economic withholding took place, the proper course of action is for the IMM to refer the Market Seller responsible for such offers to FERC for further investigation. If the IMM believes that the current rules regarding the default offer cap allow for economic withholding, the IMM, like any other stakeholder, can bring forward a Problem Statement and Issue Charge to be discussed by the PJM stakeholder body. *See* https://www.pjm.com/~/media/about-pjm/newsroom/2018-releases/20180810-pjm-statement-on-imm-analysis-of-2021-22-capacity-auction.ashx.

recommendation, along with other stakeholder input, and how it should play into the market and, if acceptable, develop a final rule.

In addition, Attachment M of PJM's Tariff explicitly allows complaints by the IMM in certain limited, specific situations,[15] but includes no such authority in situations where the IMM does not agree with a market rule. The specific delineation of the complaint authority in the limited situation, but not in situations where the IMM disagrees with a market rule, indicates that there was no intent that the IMM have complaint authority when he does not agree with a market rule. The omission of IMM complaint authority for market rule disagreements is buttressed elsewhere in Attachment M; specifically, the IMM authority is limited, as discussed above, to making referrals to the Commission: "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."[16] Read together, Attachment M provides no authority for the IMM to file a complaint when it does not agree with a market rule.

Simply, the IMM lacks any independent authority to effectuate a market design change, yet the very purpose of the IMM's Complaint is to effectuate, through a petition for Commission action, the IMM's proposed market design. The IMM has already recommended the same PAI solution proposed in the Complaint to PJM and its stakeholders. As detailed in the Complaint, the issue was discussed from March 2018 to August 2018 at PJM's Market Implementation Committee meetings. At the August 8, 2018, Market Implementation Committee meeting, stakeholders overwhelming rejected the IMM's proposal to use 60 PAIs to calculate both the default offer cap

[15] *See* Tariff, Attachment M, Section IV.E-1.

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

and the penalty rate, with 98 percent of votes opposing.[17] Should the IMM continue to believe that the issues that it identifies in the Complaint are market design flaws, then the appropriate action for the IMM under the Commission's rules is to refer those issues to the Commission and, more specifically, to Commission staff[18] – not institute legal action against PJM through a complaint.

For all of these reasons, P3 respectfully requests that the Commission dismiss the IMM Complaint due to the lack of authority on which the Complaint is premised and substantive deficiencies contained therein.

B. The IMM Complaint Should Be Dismissed Because The IMM Has Not Proven That PJM's Existing Rates Are Not Just and Reasonable.

Section 206 of the Federal Power Act, 16 U.S.C. § 824e, authorizes the Commission, on its own initiative or on a third-party complaint, to investigate whether existing rates are lawful. In such a proceeding, the complainant bears "the burden of proof to show that any rate . . . is unjust, unreasonable, unduly discriminatory, or preferential . . . ."[19] If the Commission finds that the burden has been met, it must determine and set the new just and reasonable rate. FPA § 206(a), 16 U.S.C. § 824e(a). In this matter, the IMM has not met the burden of proof to show that the default capacity MSOC is overstated.

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[17] IMM Complaint at p 7; n. 17 (referencing "Draft Minutes, Market Implementation Committee," p. 2) (Aug. 8, 2018) https://www.pjm.com/-/media/committees-groups/committees/mic/20180912/20180912-item-01-draft-minutes-mic-20180808.ashx

[18] 18 C.F.R. 35.28(g)(3)(ii)(A); PJM Tariff, Attachment M, section I.2 ("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.").

[19] FPA § 206(b), 16 U.S.C. § 824e(b); *Blumenthal* v. *FERC*, 552 F.3d 875, 881 (D.C. Cir. 2009) (stating complainant's burden of proof).

1. The IMM proposes to delink performance assessment hours and the penalty rate and the market seller offer cap and in doing so undermines a fundamental assumption of the capacity performance construct.

PJM's Capacity Performance ("CP") market design is premised on the principle that a competitive offer for capacity will reflect the opportunity costs of taking on a capacity supply obligation, which includes the potential for an energy-only resource to receive bonus payments for providing energy and operating reserves during PAIs. In response to challenges to this reliance on opportunity cost pricing, the D.C. Circuit Court found that "[T]he cap is the rate a resources needs in the capacity market to earn more with a capacity commitment than without . . . . . PJM and the Commission can allow resource owners to submit offers that take into consideration opportunity costs . . . ."[20] Expectations as to bonus payments are, in turn, a function of the number of expected hours or intervals in which performance is measured, i.e., PAH/PAIs, expected performance of the unit for which the capacity offer is being assessed, and the performance of all other units (expressed a the "balancing ratio" or "B"). Expected PAH/PAIs also are used to calculate the non-performance charge rate, which prorates the annual cost of replacement capacity (i.e., Net CONE) over the expected number of PAH/PAIs and discourages non-performing resources from taking on capacity obligations because, over time, the penalties such a non-performing resource would incur based on this rate will likely fully offset capacity revenues.[21] In order to keep this core design principal intact – that performance penalties for a non-performing resource be set equal to the cost of replacement capacity and to discourage non-performing resources from accepting a capacity

[20] *Advanced Energy Management Alliance* v. *FERC*, No. 16-1234, (D.C. Cir. June 20, 2017) ("Advanced Energy Management Alliance"), at pp. 18-19.

[21] Under this core principle of the Capacity Performance construct, if the expected number of PAH/PAIs is small, then the penalty rate should increase such that an entirely non-performing capacity resource is still assessed the replacement cost of capacity in penalties over the Delivery Year. Conversely, if the number of expected PAH/PAIs is large, then the penalty rate should be relatively low to reflect the proportional assessment of replacement costs (i.e., Net CONE) over a large number of PAH/PAIs.

obligation – the number of PAH/PAIs used to establish the penalty rate should reflect the expected level of PAH/PAIs. And given that the number of PAH/PAIs used to calculate the default offer cap should also reflect the expected level of PAH/PAIs, the same PAH/PAI value should be used in calculating both the penalty rate and the default offer cap.

In arguing that the number of PAIs used to calculate the default offer cap is unjust and unreasonable, without making a similar claim with respect to the number of PAIs used to calculate the non-performance charge rate, the IMM inappropriately seeks to break the link between the non-performance charge rate and the default offer cap. Breaking this linkage would undermine the core goals and underlying logic of the Capacity Performance design. Specifically, the PAI assumption used to develop both the nonperformance charge rate and the MSOC should drive efficient decisions by individual resources. When the nonperformance charge rate reflects the expected number of PAI, resources will only accept a capacity supply obligation when they expect to be able to perform during PAI. When the MSOC reflects the expected number of PAI, a resource will only accept a capacity supply obligation when it is at least indifferent to doing so relative to being an energy-only resource and earning bonus payments. Using a different PAI to develop the nonperformance charge rate and the MSOC will distort this efficient decision making in one direction or the other – inducing too many non-performing resources or too few performing resources to accept a capacity supply obligation.

Thus, failing to link the expected PAIs in the calculation of the non-performance charge rate and the default offer cap fundamentally breaks the economic logic underlying the Capacity Performance construct and introduces inefficiencies that could fatally compromise the ability of the Capacity Performance reforms to achieve their intended goal of ensuring reliability at

reasonable cost. The IMM provides no justification for altering this fundamental aspect of PJM's market design.[22]

The thrust of the IMM's Complaint goes not to the calculation of the default offer cap, but to the delinking of the default offer cap with the non-performance charge rate through the estimation of PAH/PAIs. This link is a core feature of the Capacity Performance market reforms. Importantly, this feature was proposed and supported by the IMM[23] and expressly acknowledged and approved by the Commission. However, the IMM makes only a cursory mention of it in the Complaint. The IMM's Complaint recognizes that an alternative remedy would to be maintain the MSOC at its current level, but increase the nonperformance charge rate so that it is based on 60 PAIs.[24] In the absence of any supporting documentation, the IMM haphazardly asserts that the current nonperformance charge rate is sufficiently high to incentivize appropriate performance.[25] Further, the IMM does not discuss, much less justify, finding that the link between the nonperformance charge rate and MSOC has become unjust and unreasonable. By simply assuming away the connection between the non-performance charge rate and the default offer cap, the IMM

[22] P3 recognizes that the Commission accepted ISO-NE's Capacity Market Pay for Performance proposal with an initial nonperformance penalty rate that reflected a different number of performance assessment intervals than was used to develop ISO-NE's equivalent of the MSOC.[22] However, that acceptance explicitly recognized that the initial penalty rate would increase after ISO-NE had been able to evaluate market participants' behavior under the new market design, particularly in light of the fact that the Commission directed ISO-NE to increase the Reserve Constraint Penalty Factors at the same time.[22] Thus, after this transition in New England, ISO-NE's final, permanent design will have a penalty rate that is linked through the assumed number of performance assessment intervals to ISO-NE's equivalent of a market seller offer cap the number of performance hours. On the other hand, the Commission decided in PJM that it need not have a phase-in of the nonperformance rate charge as it transitioned to full Capacity Performance. *See* CP Order, P 161.

[23] Capacity Performance Rehearing Order, 155 FERC ¶ 61,157 at P 184 ("the Market Monitor originally proposed, and supports, this default offer cap methodology in this proceeding.").

[24] IMM Complaint at pp. 6-7.

[25] *Id.*

is seeking to relitigate – with limited discussion – issues that the Commission already decided in the Capacity Performance Order.[26] The Complaint focuses on only one aspect of a more complicated, interrelated market design and, thus, fails to satisfy its burden of demonstrating that PJM's PAH/PAI assumptions are resulting in unjust and unreasonable rates.

2. The Commission specifically provided latitude to suppliers to offer below the market seller offer cap.

P3 respectfully submits that the Commission fully understood that suppliers would have latitude to offer bids up to Net CONE * B when it issued the CP order. Contrary to the assertion in the Complaint, the Commission knowingly set up a "safe harbor" for offers recognizing the increased risks and opportunity costs associated with CP. Thus, the Commission stated, in part, that:

> "We therefore agree with PJM that it is reasonable to set a default Capacity Performance Resource offer cap equal to the competitive offer estimate for a Low ACR [Avoidable Cost Rate] Resource, i.e., Net CONE times the Balancing Ratio, because that estimate will always be lower than the competitive offer estimate for a High ACR Resource. Any Capacity Performance offer below the default offer cap can properly be deemed competitive, and any offer above that level will be scrutinized by the Market Monitor and PJM to ensure that it is based on legitimate costs and reasonable estimates of unit-specific performance and system parameters."[27]

The Commission specifically rejected arguments to set an offer cap at a unit's net ACR. Indeed, if the IMM complaint was granted, the Commission would create the very situation it sought to avoid in approving Capacity Performance. As the Commission acknowledged at the time:

> "Joint Consumers argue that PJM's change is not just and reasonable and the existing net Avoidable Cost Rate methodology establishes a just and reasonable

[26] *See* Capacity Performance Order, *PJM Interconnection, L.L.*C., 151 FERC ¶ 61,208 at P 119 (summarizing the IMM's opposition to multiple elements of the penalty rate, including use of 30 PAHs and the stop-loss provisions).

[27] CP Order, P 340.

> evaluation of capacity sell offers within the Capacity Performance design. As we note above, we find that given the redefined capacity product PJM proposes, it is reasonable to allow capacity sellers to factor into their offers the costs and risks associated with assuming the redefined capacity obligation. The existing net Avoidable Cost Rate methodology would not permit inclusion of such costs and risks and thus could prevent capacity sellers from submitting legitimate, competitive offers."[28]

Further, the D.C. Circuit Court specifically rejected arguments that the offer cap can only reflect resources' actual costs and instead agreed with PJM's opportunity cost approach.[29]

The Commission very specifically envisioned clearing prices over the MSOC that were based on ACR calculation. As the Commission stated at the time, "High ACR Resources, which are those most likely to set the clearing price, will, under PJM's Revised Offer Cap, be subject to unit-specific offer review and must justify the assumptions and estimates in their requested offer price."[30]

The default offer cap was intended to allow resources the flexibility to reflect in their offers their particular expectations around the costs and risks arising from performance assessment and associated penalties and bonuses. Expectations will vary from resource to resource and are highly dependent on other things, including the resource owner's forward-looking view of PAH/PAIs. The IMM's proposal would subject most, if not all, resources to mitigation based on the IMM's

[28] CP Order, P 344.

[29] Advanced Energy Management Alliance, at p. 19.

[30] *Id.*

view of Capacity Performance costs and risk, which could vary greatly from a given participant's view, especially given the possibility of a high number of PAI as experienced in 2014.[31]

Effectively, the IMM seeks to eliminate a resource's ability to offer based on its opportunity costs in favor of the IMM's preferred ACR review process. As explained more fully above, the IMM's proposal seeks to drive the opportunity cost (i.e., the amount an energy-only resource could earn in bonus payment) effectively to zero, essentially removing opportunity cost from consideration so that the IMM's preferred ACR methodology can be exclusively considered.[32] However, the Commission explicitly approved consideration of opportunity costs and understood that such costs would be a meaningful factor in establishing competitive offers.[33] In addition, as discussed above, the Commission understood that the penalty rate would be set using the same number of hours as used to set the offer cap.[34] Moreover, the D.C. Circuit Court upheld this opportunity cost methodology for determining competitive offers. In part, the Court held that:

> "PJM and the Commission can allow resource owners to submit offers that take into consideration opportunity costs . . . . Market mitigation measures do not need to protect consumers from the actual costs of capacity. The Commission reasonably concluded that resource owners can consider all of their costs and risks in formulating an offer."[35]

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[31] P3 notes that in a separate proceeding, ER19-1404, the IMM offers that generation owners "have intimate familiarity with their own costs" and that the IMM "is prepared to engage in review of company ACR filings in a timely manner." While P3 appreciates both of these assertions by the IMM, the administrative burden on PJM, the IMM and resources owners associated with a dramatic increase in number of units that will seek to offer above the market seller offer is not something that can be so easily dismissed. History has proven that disagreements between the IMM and resource owners regarding both costs and risks have led to prolonged discussions about a specific unit's ACR.

[32] *See* IMM Complaint at pp. 5-6 and p. 10 ("If a market seller expects a very low or zero PAI, there is very little opportunity or no opportunity to earn bonus revenues as an energy only resource. Under this expectation, the default MSOC would be lower than the net ACR.").

[33] CP Order, PP 335-336.

[34] *Id*., PP 336-338.

[35] *Advanced Energy Management Alliance*, at pp. 19-20.

The IMM suggests - again without providing any meaningful support - that sellers are allegedly exercising market power, but this position ignores the precedent approving the opportunity cost considerations for establishing competitive offers under CP. The Commission, therefore, should reject the IMM's proposed changes that would nullify the use of opportunity costs in favor of the IMM's preferred ACR methodology.

3. The IMM has failed to demonstrate the exercise of market power.

The IMM's Complaint provides paltry and scant evidence that capacity resources have exercised market power. Specifically, the IMM cites three basic fact patterns to support its assertion that the exercise of market power was endemic. First, the IMM notes that the vast majority of resources used the default MSOC rather than a unit-specific ACR when developing capacity market offers. Second, the IMM notes that most resources that used the default MSOC offered below the MSOC and the capacity market clearing price was set below the default MSOC. Third, the IMM provided simulation results that capacity prices decrease when the IMM unilaterally reduced any offer to its view of a resource's unit-specific cost. None of the evidence presented by the IMM is definitive support for the assertion that the exercise of market power was endemic.

The IMM's first argument regarding the exercise of market power is based on whether resources used the default MSOC or a resource-specific ACR when establishing their capacity offers. The IMM argues that the fact that a very small percentage of unit specific offers were above the MSOC, or equivalently, a large percentage of non-zero offers use the default offer cap, is consistent with "endemic market power."[36] The IMM does not appear to assert that 99 percent

[36] IMM Complaint, p. 8.

of MWs that bid above zero were offered at the MSOC. Rather, the IMM appears to be making the statement that some subset of resources availed themselves of the FERC-approved opportunity to offer at least some capacity at a price greater than zero, but no greater than the applicable MSOC. This fact pattern is more a statement of the level of MSOC relative to the typical ACR than it is a statement about the exercise of market power. Specifically, the balancing ratio upon which the MSOC was based for the 2021/22 RPM was equal to 78.5 percent. It is not surprising that most existing resources have an ACR that is equal to or less than 78.5 percent of Net CONE. The IMM provides no information about the amount of capacity it believes was economically withheld.

The IMM's second argument is that most resources that used the default MSOC offered below the MSOC and the capacity market clearing price was set below the default MSOC. The fact that clearing prices are below the MSOC is not evidence of market power, but rather a market that is more competitive than envisioned by PJM. Given the rapid changes to supply and demand fundamentals, it is plausible that unit owners have disparate expectations about the number of PAI three years into the future. If market power were truly endemic, one would expect the capacity market clearing price to be even closer to (if not above) the default MSOC. However, such an outcome has not been proven to be the case and, as a result, consumers and the IMM should be rejoicing that competition has driven capacity prices so low.

The IMM's final argument in favor of endemic exercise of market power is based on simulation results that show capacity prices decrease when the IMM caps all offers at its unsupported view of a resource's ACR.[37] It is not surprising that the IMM can generate lower capacity market clearing prices by arbitrarily decreasing some capacity offers to a level that is not

[37] In addition, it is completely unclear how the IMM computed ACRs in its simulation as any ACR information it lacks much of the relevant information; as such, any such analysis would have to be based on historic data or subjective assumptions made by the IMM.

supported. The IMM provides no evidence of specific offers above a plausible measure of a competitive offer, when accounting for the risks and opportunities given some potential for a high number of PAI. The IMM's simulation inputs are unsupported and the results are not at the level of detail necessary to conclude that there was endemic exercise of market power.

For all of these reasons, P3 respectfully requests that the Commission dismiss the IMM Complaint due to the fact that the IMM has not proven that PJM's existing rates are not just and reasonable, and would undermine fundamental assumptions from the Commission's Capacity Performance Order.

II. COMMENTS

A. The Commission Should Consider The Implications That The IMM's Proposal Would Have On Other Proceedings.

The issues raised by the IMM have implications that stretch across the entire capacity performance construct – the MSOC and the penalty factors are the glue that hold the CP construct together. As P3 has previously stated, many decisions currently pending before the Commission that directly relate to PJM's capacity market could impact the issues in this proceeding. Some of these capacity-related proceedings include PJM's filing to restructure the capacity market's Minimum Offer Price Rule ("MOPR") in docket Nos. ER 18-1314 and EL18-178; several complaint proceedings against PJM regarding pseudo-tied resources that could affect the upcoming auction;[38] PJM's filings relating to Price Responsive Demand and peaking shaving

[38] *Brookfield Energy Marketing* v. *PJM* [Complaint regarding PJM implementation of pseudo-tie rules], Docket No. EL19-34-000 (filed January 18, 2019); *Potomac Economics* v. *PJM* [Complaint from the MISO Market Monitor regarding pseudo-tie requirement], Docket No. EL17-62-000 (filed April 6, 2017); *Northern Illinois Municipal Power Agency* v. *PJM* [Complaint regarding pseudo-tie requirement], Docket No. EL17-31-000 (filed December 21, 2016); and Cube Yadkin Generation LLC, Docket No. EL19-51-000 (filed March 1, 2019).

programs;[39] and proposed revisions to the VRR curve, to name a few.[40] These intertwined issues in the context of a complaint would not allow for a thoughtful process. Granting the IMM Complaint could have significant unintended consequences as the proposed reduction to the MSOC and corresponding increase in penalties would bring dramatic change to the CP construct. The Commission, therefore, should reject the IMM's Complaint as an impermissible filing to upend both prior, settled matters by this Commission, as well as ongoing proceedings in other case dockets.

B. In The Event The Commission Is Inclined To Grant The IMM's Complaint, Then The Commission Should Take A Deliberative And Thoughtful Approach To Any Reforms.

Notwithstanding the foregoing, if the Commission were to find that PJM's PAH/PAI assumptions are resulting in unjust and unreasonable rates, the IMM has not demonstrated that it would be appropriate to use 60 PAIs (equivalent to 5 PAHs) to calculate the default offer cap while using 360 PAIs (equivalent to 30 PAHs) to calculate the non-performance charge rate. As discussed above, the default offer cap reflects the opportunity cost of accepting a Capacity Performance obligation, which is a function of the non-performance charge rate, which in turn is based on a proration of replacement costs (Net CONE) across expected performance assessment periods (PAH/PAIs). This links the use of PAH/PAIs in the calculation of the non-performance charge rate to the use of PAH/PAIs in the calculation of the default offer cap. The IMM has not

[39] Proposed tariff revisions to align Price Response Demand rules with Capacity Performance requirements, Docket No. ER19-1012-000 (filed on February 7, 2019); and Proposed tariff revisions to recognize summer only peaking shaving programs in demand forecasts, Docket No. ER19-511-000 (filed on December 7, 2018).

[40] Proposed revisions to the VRR curve as a result of the quadrennial review, Docket No. ER19-105 (filed October 12, 2018). FERC issued a deficiency letter on January 15, 2019. PJM responded on February 14, 2019. Note that PJM requested an effective date of December 18, 2018.

justified the use of different expectations of non-performance risk for interrelated components of PJM's capacity market design. If the Commission were to consider a change to the number of PAI/PAHs, it would need to use the same new value for purposes of calculating both the non-performance charge rate and the default offer cap. To do otherwise would open up the broader design of the Capacity Performance construct approved by the Commission. The IMM does not address these broader market design issues and, therefore, does not justify adoption of its proposed solution.

Even if the Commission were to consider a change to the number of PAH/PAIs used to calculate both the default offer cap and the non-performance charge rate, the question would remain as to the appropriate number of PAH/PAIs to use. The IMM suggests 5 PAHs/60 PAIs, arguing that it would reflect reasonable forward-looking expectations of the likely number of performance assessment periods given that recent capacity auctions have cleared in excess of the target Installed Reserve Margin. However, adopting the IMM's proposed number of PAH/PAIs would result in a significant increase in the non-performance charge rate and should not be undertaken based on the limited record in this proceeding. The design of PJM's capacity market is explicitly intended to produce a long-term equilibrium where cleared capacity is equal to the target Installed Reserve Margin ("IRM") and the clearing price is Net CONE. This design basis is thus the best measure of ex-ante market expectations with respect to expected PAH/PAIs and other parameters, particularly if one is seeking to set parameters that are stable and reasonable over the long-term. The IMM's proposal would ignore these principles.

In addition to the issues discussed above, the proposed change offered by the IMM simply goes too far, too quickly. As stated above, if accepted, the IMM's Complaint would result in dramatic decrease to the MSOC and dramatic increase to the penalty factor. It would also likely

lead to a sharp increase in the number of generators seeking unit specific ACRs, raising the prospects of disputes between the IMM and generators on appropriate ACR levels. P3, therefore, respectfully submits that if the Commission determines that any change to PAH/PAI is warranted, it should move incrementally and should "ensure that PJM's capacity market provides adequate incentives for resource performance . . . "[41] In that regard, P3 respectfully recommends that the Commission consider alternative approaches, such as those suggested by Calpine Corporation and Vistra Energy Corp., to address the Independent Market Monitor's concern that "only a small number of very high offers are subject to unit specific cost review for market power."[42] Such approaches provide a more balanced approach to addressing the IMM's issues, while maintaining the necessary balance of ensuring that both the incentives and potential penalties for Capacity Performance are respected.

C. If The Commission Grants The Complaint With An Effective Date Prior To The Base Residual Auction For Delivery Year 2022/23, Then The Commission Must Provide An Opportunity For Generators With Avoidable Costs Over The Newly Revised Market Seller Offer Cap To Obtain, Before The Auction, A Revised Offer Cap Based On Going Forward Costs.

If the Commission grants the complaint with an effective date prior to the Base Residual Auction for delivery year 2022/23, then the Commission must provide an opportunity for generators with avoidable costs over the newly revised market seller offer cap to obtain, before the auction, a revised offer cap based on going forward costs. The current deadline to request a unit specific offer cap is April 16, 2019. Given that the Commission is not likely to reach a conclusion

[41] CP Order, P 1.

[42] IMM Complaint, at pp. 1-2.

on this complaint by that date, any change in the MSOC that could impact offers in the August 2019 BRA would need to afford generators the opportunity to respond appropriately.

III. CONCLUSION

For the foregoing reasons, P3 respectfully requests that the Commission consider this Protest and dismiss the IMM's Complaint. In the alternative, P3 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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April 15, 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 15th day of April, 2019.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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