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BEFORE THE NEW JERSEY BOARD OF PUBLIC UTILITIES

In the Matter of the Implementation of L.
2018, c. 16 Regarding the Establishment of a
Zero Emission Certificate Program for
Eligible Nuclear Power Plants

Docket No. EO18080899

ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM

Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor"), submits this answer to the brief filed October 29, 2018, by Public Service Electric and Gas Company, et al. ("PSEG Companies") in opposition to the Market Monitor's motion to intervene filed October 19, 2018. Contrary to the PSEG Companies' arguments, the Market Monitor meets the relevant criteria for intervention in this matter and should be afforded full rights as a party.

I. ANSWER

A. The Market Monitor Meets the Applicable Standard

PSEG Companies state (at 4) the applicable standard:

N.J.A.C. 1:1-16.1 provides that "[a]ny person or entity not initially a party ... who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene." *N.J.A.C. 1:1-16.3* provides additional standards to consider in addressing a request for intervention as *follows*:

- (i) the nature and extent of the movant's interest in the outcome of the case, (ii) whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, (iii) the prospect of confusion or undue delay arising from the movant's inclusion, and (iv) other appropriate matters.

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The Market Monitor meets the standard for intervention.

PSEG Companies complain (at 5): “The IMM does not claim an interest as either as a consumer or a provider of energy.” The Market Monitor is, of course, a consumer of energy in the PJM footprint, and technically meets the “directly affected” standard on that basis. However, the reason to grant intervention in this proceeding is the Market Monitor’s interest in and mandate to protect competition in PJM markets. That interest, as the Board is well aware, is more than an academic one. The “monitoring” that the Market Monitor is charged to perform and does perform is not passive and is not merely observational. The Market Monitor is required to operate independently from PJM, and protecting the competitiveness of PJM markets is fundamental to the Market Monitor’s mission.¹ To fulfill that mission the Market Monitor has, for over ten years, routinely intervened and/or actively participated in hundreds of federal regulatory and state proceedings. Such state proceedings have included Board matters.² Similarly misguided challenges to the Market Monitor’s ability to intervene in FERC proceedings have been denied.³

¹ 18 CFR § 35.28(g)(3)(ii); see also *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶31,281 (2008) (“Order No. 719”), *order on reh’g*, Order No. 719-A, FERC Stats. & Regs. ¶31,292 (2009), *reh’g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

² See, e.g., In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc., BPU Docket No. EM14060581, Order Approving Stipulation of Settlement (March 6, 2015) at 4.

³ See *PA Solar Park, LLC*, 164 FERC ¶ 61,118 (2018); *Panda Stonewall, LLC*, Order Granting Out-of-Time Motion to Intervene, Docket No. ER17-1821-002 (May 15, 2018), *Panda Stonewall, LLC*, Order Denying Motion for Reconsideration, Docket No. ER17-1821-002 (Aug. 22, 2018).

The Federal Energy Regulatory Commission (“FERC”) assigns three core functions to MMUs: reporting, monitoring and market design.⁴ These functions are interrelated and overlap. The PJM Market Monitoring Plan establishes these functions, providing that the MMU is responsible for monitoring: compliance with the PJM Market Rules; actual or potential design flaws in the PJM Market Rules; structural problems in the PJM Markets that may inhibit a robust and competitive market; the actual or potential exercise of market power or violation of the market rules by a Market Participant; PJM’s implementation of the PJM Market Rules or operation of the PJM Markets; and such matters as are necessary to prepare reports.⁵

Section IV.J.2 of the PJM Market Monitoring Plan specifically authorized the Market Monitor to “file reports and make appropriate regulatory filings with Authorized Government Agencies to address design flaws, structural problems, compliance, market power, or other issues, and seek such appropriate action or make such recommendations as the Market Monitoring Unit shall deem appropriate.” The Board is an “Authorized Government Agency” as defined in the PJM Tariff.⁶ Aiding the Board in its decision making, particularly with respect to a matter as important as this one, is squarely within the Market Monitor’s mandate. Disallowing intervention in this matter may impede the ability of the Market Monitor to make future regulatory filings with the Board pursuant to Section IV.J.2.

⁴ See footnote 1.

⁵ OATT Attachment M § IV; 18 CFR § 1c.2.

⁶ OATT § 1 (Definitions—A–B) (““Authorized Government Agency” means a regulatory body or government agency, with jurisdiction over PJM, the PJM Market, or any entity doing business in the PJM Market, including, but not limited to, the Commission, State Commissions, and state and federal attorneys general.”).

B. The Market Monitor's Concerns for Protecting Competition Are Not Speculative and Are Within the Scope of this Proceeding.

PSEG Companies claim (at 5), "the effect on PJM markets that the implementation of the ZEC Act 'may' have ... clearly is a speculative impact at most." Many potential outcomes to this proceeding would have an impact on competition, none of which is a matter of speculation. Consideration of the impacts of the BPU's potential courses of action in the matter are a major reason, if not the purpose, for convening a hearing.

PSEG Companies cites (at 6) the Board's statement in its September 11, 2018, notice:

[T]he Board shall—after notice, the opportunity for comment, and public hearings – issue an order establishing a ZEC program for selected nuclear power plants. The Board's Order shall include but need not be limited to: (i) a method and application process for determination of the eligibility and selection of nuclear power plants; and (ii) establishment of a mechanism for each EDC to purchase ZECs from selected nuclear power plants.

PSEG Companies assert (at 6–7): "Consideration of how the selection of a ZEC recipient may or may not affect competition in the PJM markets is in no way an issue that the BPU will address." ZEC instruments now exist only as a matter of law. ZECs will affect competition based on how many are awarded and based on which generators receive them. The Market Monitor's interest is exactly consistent with the scope of this proceeding.

ZECs will affect competition only to the extent that a generator or generators can establish eligibility to receive them. The more ZECs received, the greater the impact on competition. The Market Monitor seeks in this proceeding to protect competition by ensuring that generators selected to receive ZECs actually meet the applicable criteria. Such a result will minimize the harmful impact on competition. The point of this proceeding is to award ZECs only if needed. The Market Monitor's concerns are plainly within the scope of this proceeding.

C. The Market Monitor's Participation Will Not Cause Confusion and Delay.

PSEG Companies complain (at 8–9) that the Market Monitor's participation will cause confusion and undue delay. The Market Monitor has timely filed its comments, and those comments respond to the Board's inquiries. There is no basis for the assertion that the Market Monitor's participation would create confusion or undue delay. The Market Monitor offers unique insight and perspective on the financial viability of plants seeking ZECs. The participation of the Market Monitor will add clarity and reduce confusion.

D. The Market Monitor Should Have Access to Confidential Information.

PSEG Companies, in addition to challenging the Market Monitor's motion to intervene, challenges the ability of the Market Monitor to receive confidential information if participation is permitted. PSEG Companies state (at 2): "... [U]nder the ZEC Act, confidential financial information supplied by an applicant for the purpose of demonstrating eligibility is only available to entities that have been 'deem[ed] essential [by the Board and the Attorney General] to aid the board in making the determinations required' in this proceeding." PSEG Companies argue (*id.*): "Even if the IMM were granted status as an intervenor ..., the IMM would still not be "essential" as required by the ZEC Act to review confidential financial submittals."

The decision of what is "essential" is the Board's. Taking advantage of the Market Monitor's unique experience and information with the operation of generators in PJM markets would not mean, as PSEG Companies imply (at 4), that the Board lacks "inherent capabilities to make the financial determinations required under the ZEC Act with its own personnel" or "the ability to hire any necessary consultants." PSEG's argument (at 4) that the Market Monitor's contribution would be "redundant" fails to recognize that experience with PJM markets and the operations of generators in those markets is not available elsewhere at any price. The Market Monitor has more than 10 years of experience in reviewing generators' costs in the PJM capacity markets as part of reviewing unit specific competitive offers. That experience is unique and will be of value to the BPU in their review of this filing.

PSEG Companies fail to support their assertions that the Market Monitor should not be granted intervention or that the Market Monitor should not have access to confidential information. The Market Monitor's motion should be granted without qualification.

II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this answer as it considers the Market Monitor's motion to intervene.

Respectfully submitted,



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Dated: November 2, 2018

CERTIFICATE OF SERVICE

I hereby state that I have this day served the foregoing document by hard and electronic copy upon each of the Board, Rate Counsel and the Division of Law, and by electronic copy on the filing companies and other potentially interested parties.

Dated at Eagleville, Pennsylvania,
this 2nd day of November, 2018.



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