UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Independent Market Monitor for PJM	)	Docket No. EL25-87-000
v.	)	
Indicated Energy Efficiency Sellers	)	

COMPLAINT OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 206 of the Commission's Rules and Regulations,[1] Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor ("Market Monitor") for PJM Interconnection, L.L.C. ("PJM"),[2] files this Complaint against the sellers of Energy Efficiency MW that filed post installation M&V reports[3] ("Reports") on May 7 and 9, 2025 ("Reports") to support their receipt of payments for Energy Efficiency ("EE") effective during the 2025/2026 Delivery Year ("Indicated Energy Efficiency Sellers").[4] The Reports fail to provide adequate evidence to demonstrate that the included EE measures meet the requirements to be approved and to receive payment.[5] It is unjust and unreasonable to require PJM customers to pay for any portion of the total $148 million for

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1 18 CFR § 385.206 (2024).

2 Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT"), the PJM Operating Agreement ("OA") or the PJM Reliability Assurance Agreement ("RAA").

3 RAA Schedule 6 § L.6.

4 The Reports will be included as confidential Attachment C.

5 RAA Schedule 6 § L.2.

EE MW that have not been demonstrated to meet the requirements to be paid.[6] The Reports are provided fifteen business days prior to the beginning of the delivery year, which is insufficient time for the necessary review of the information, to make requests for additional information, to provide that additional information, and to review all the information and reach a conclusion prior to the start of payments, let alone to provide for a considered regulatory decision. Preliminary review shows the inclusion of invalid projects, invalid measurement and verification methods and the basis for challenging most if not all of asserted payments.[7] PJM should not make any payments, and the Indicated Energy Efficiency Sellers should be directed not to take payment for any Energy Efficiency MW during the 2025/2026 Delivery Year based on the Reports unless and until the basis for payments is fully reviewed and either rejected or accepted on the basis of that review. Payments to Energy Efficiency in the 2025/2026 Delivery Year would be the second highest since the first such payments in the 2011/2012 Delivery Year. The highest annual payment was $185.8 million in the 2021/2022 Delivery Year. While the EE UCAP MW volume in 2025/2026 is down 80.6 percent from its high water mark in 2024/2025, the high level of payments in 2025/2026 is attributable to the extremely high capacity market prices for the 2025/2026 Delivery Year.[8]

Indicated Energy Efficiency Sellers should be directed to fully cooperate with an investigation by PJM and the Market Monitor into the complete details of the EE MW for which Indicated Energy Efficiency Sellers have requested payment. PJM and the Market Monitor should be directed to complete the investigation in a timely manner and to each

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6 The $148 million includes all EE payments including payments for utility programs. More than half that amount is at issue for the named companies. The exact amount for each is confidential.

7 PJM. "Manual 18B: Energy Efficiency Measurement & Verification," § 5.1.3 Rev. 05 (Sep. 21, 2022).

8 RTO clearing price in the 2025/2026 BRA was $269.92/MW-day compared to $28.92/MW-day in the 2024/2025 BRA.

make recommendations to the Commission about whether any of the EE MW have met the requirements to be paid. The Commission should direct evidentiary hearings as needed.

The capacity auctions for the 2025/2026 Delivery Year have been completed. The delivery year starts on June 1, 2025. As a result of the fact that EE is not a capacity resource and does not affect reliability, there will be no impact to PJM's reliability if this Complaint is granted and even if 100 percent of all the claimed payments were denied.

The Complaint includes a nonpublic and confidential Attachment C. A proposed protective agreement, primarily based on the Chief Administrative Law Judge's Model Protective Order, but modified to remove provisions related to oil pipelines and to take the form of an agreement, is included as Attachment A. The Protective Agreement substantively departs from the Model Protective Order by protecting from disclosure the release of confidential Reports to other Indicated Energy Efficiency Sellers. The Reports of Indicated Energy Efficiency Sellers are confidential. Disclosure of the Reports among competitors would be contrary to the public interest in competition. The Indicated Energy Efficiency Sellers have or should have their own Reports, but the Market Monitor will provide copies of an Indicated Energy Efficiency Seller's own Report upon request.

I. PARTIES

The following table lists each of the respondent Indicated Energy Efficiency Sellers and their representatives, each of whom have received service of this Complaint.

Seller	**Representatives**	**Email**
Affirmed Energy LLC	Luke Fishback	luke@affirmed.energy
Enel X North America Inc.	Erin Donohue	Erin.donohue@enel.com
Enerwise Global Technologies, LLC	Dann Price	dann.price@CPowerEnergy.com

The Complaint also names affiliates of the above entities to the extent such affiliates are responsible for matters within the scope of the Complaint.

II. BACKGROUND

A. Definition of Energy Efficiency MW

EE MW are not capacity resources, and have not been since 2016. EE MW are not included in the supply of capacity in any capacity market auction. EE MW cannot be used to replace capacity resources. EE MW do not contribute to PJM system reliability. EE MW are not part of the PJM Capacity Market.[9][10] EE MW are nonetheless paid the capacity market clearing price. The original rationale for the inclusion of EE in the PJM Capacity Market was that PJM's load forecasts did not account for the impact of EE on demand for four years. Regardless of whether that was a good reason at the time, that has not been true since 2016. EE payments are a subsidy paid directly by load via an uplift charge, in the capacity market construct. The term capacity market construct is used rather than capacity market because EE does not participate in the capacity market but is nonetheless paid the capacity market clearing price.

On November 5, 2024, the Commission approved changes to the PJM Market Rules that ended the unauthorized payment of subsidies to EE.[11] [12] The 2025/2026 Delivery Year is the last delivery year that will include unauthorized subsidy payments to EE.[13] This Complaint is about whether these requested payments for the 2025/2026 Delivery Year meet the standards for such payments.

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9 OATT Attachment DD-1 § L.1.

10 RAA Schedule 6 § L.1.

11 *See PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,095 (2024), *reh'g denied*, 190 FERC ¶ 62,005 (2025), *appeal pending*, Case No. 25-1091 (D.C. Cir).

12 *See id*.

13 *See* Market Monitor Complaint v. PJM, Docket No. EL24-126-000 (July 10, 2024) (withdrawn).

B. Energy Efficiency Plans and Reports

An EE resource is required to be a project that involves the installation of more efficient devices or equipment, or the implementation of more efficient processes or systems, exceeding the current building codes, appliance standards, or other relevant standards, at the time of installation, as known at the time of commitment, and meets PJM's requirements.[14] The EE resource must achieve a permanent, continuous reduction in electric energy consumption at the End Use Customer's retail site during the defined EE Performance Hours that is not reflected in the peak load forecast used for the auction delivery year for which the EE resource is proposed.[15]

An EE resource seller must submit an initial measurement and verification plan for the EE resource no later than 30 days prior to the RPM Auction in which the EE resource is to be initially offered.[16] An EE resource seller must submit an updated measurement and verification (M&V) plan for the EE resource no later than 30 days prior to the next RPM auction in which the EE resource is eligible and is to be subsequently offered for up to a maximum of four consecutive delivery years for any specific measure.[17] The nominated EE value approved by PJM in an EE resource seller's initial/updated M&V plan establishes the maximum amount of MW that may be offered for payment in the capacity market mechanism (on a summer period basis).[18] The capacity performance value approved by PJM in an EE resource seller's Initial/Updated M&V Plan provides guidance to the EE

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14 RAA Schedule 6 § L.

15 *Id*.

16 RAA Schedule 6 § L.2.

17 PJM, Manual 18: PJM Capacity Market § 4.4, Rev. 58 (Nov. 15, 2023).

18 Manual 18B.

resource seller on the maximum amount of MW that may be offered.[19] Post installation of the EE resource, an EE resource seller must submit an initial post installation M&V report for the EE resource prior to the first delivery year for which the EE resource is committed.[20] An EE resource seller must submit updated post installation M&V reports prior to each delivery year for which that resource is committed. Failure to submit an updated post installation M&V report prior to a subsequent delivery year or failure to demonstrate that post installation M&V activities were performed in accordance with the timeline in the approved M&V Plan will result in a final nominated EE value and final capacity performance of an EE resource equal to zero MW for the delivery year.[21]

C. Energy Efficiency Programs

EE providers employ a variety of means by which they claim to acquire the rights to projects that they submit for payment through the PJM capacity market construct. These generally include upstream, midstream, downstream and direct install programs. Upstream EE programs claim the rights to the PJM capacity price payments based on energy using products upstream of the point of sale through agreements with distributors that supply retail stores. The Indicated Energy Efficiency Sellers collect installation, sales and manufacturing data for energy using products and submit them as the basis for payments through the PJM capacity market mechanism. Midstream EE programs are those that claim the rights to PJM capacity payments based on the purchase of energy using products by retail customers at the point of sale, through agreements between Indicated Energy Efficiency Sellers and retail sellers of electric equipment and retail chain stores. Downstream programs involve incentivizing the adoption of energy using products

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[19] *Id*.

[20] *Id*.

[21] *Id*.

through rebates offered after being purchased by an end use customer. Direct install programs involve the installation of energy using products in an end use customer location and is often accomplished through partnerships with contractors and energy service companies.

EE providers simply aggregate sales or installation data of products that end use customers independently made the decision to purchase, claim ownership of the capacity rights, and submit the sales receipts together with unsupported assumptions about actual usage to support being paid through the PJM Capacity Market. EE providers also claim recently completed projects through the submission of M&V reports in order to monetize them through PJM's Capacity Market. There is no evidence provided by Indicated Energy Efficiency Sellers to support the assertion that the EE provider's programs cause these measures to be adopted. EE providers' arrangements with midstream and upstream equipment suppliers sometimes include incentives in the form of payments to the equipment supplier. These payments are represented to incent the purchase of the more energy efficient product, but no evidence is provided that these payments either result in a decreased sale price to the customer rather than going directly to manufacturers and distributors, or result in increases in purchase volume.

For the midstream and upstream programs, these payments are based, in significant part, on EE providers' representation that they should be credited for providing EE resources based on energy efficiency product sales data from retail chains. Indicated Energy Efficiency Sellers add up these retail receipts and, without contracts that support a claim of ownership, submit them for subsidy payments as EE MW in the PJM capacity construct based on further assumptions about product use.

The Indicated Energy Efficiency Sellers should be required to demonstrate that they meet the requirements in the PJM Market Rules.

The Indicated Energy Efficiency Sellers claim, without support, that they have acquired exclusive ownership of the capacity price payment rights associated with those products. They assert these claims even though they do not know and have no contractual

relationship with the ultimate purchaser of those products. They do not show that such purchasers are aware that such rights exist and have been previously conveyed to the Indicated Energy Efficiency Sellers. The Indicated Energy Efficiency Sellers have not demonstrated that they have a legal claim to these rights, or are entitled to payment via PJM's capacity market mechanism for these products. The Indicated Energy Efficiency Sellers via midstream and upstream programs do not directly manufacture, distribute or sell the products for which they obtain payments based on the capacity market price. The Indicated Energy Efficiency Sellers simply collect data on the independent purchases of end use customers. Indicated Energy Efficiency Sellers do not show that such customers purchased the products because of the Indicated Energy Efficiency Seller's actions. Indicated Energy Efficiency Sellers nevertheless assert that such behavior is an appropriate basis for energy efficiency payments to the Indicated Energy Efficiency Sellers.

Holding all other issues aside, due to the overlapping products and territories in which the Indicated Energy Efficiency Sellers operate, and the absence of a registration system for their products, there is no way to identify duplicative claims on capacity rights of products among Indicated Energy Efficiency Sellers. Due to the absence of a direct contractual relationship with the end use customers for such products, Indicated Energy Efficiency Sellers have not and cannot provide information about whether, when or where these products are installed.

EE providers use of the midstream and upstream programs fails to comply with the basic requirements set out in the PJM Tariff and Manuals. Specifically, EE providers fail to demonstrate that midstream and upstream programs cause any reductions in energy consumption or changes in behavior by end use customers. EE providers lack any contractual relationship with end-use customers and fail to establish any legal rights to the capacity value required to be eligible to receive capacity payments from PJM. There is no evidence that EE participation in PJM markets causes end use customers to reduce their energy consumption beyond what they would have otherwise. In addition, EE providers use of other approaches suffer from related deficiencies, including the failure to meet the

requirements to demonstrate that any reduction in energy use resulted from the identified measures.

D. Measurement and Verification Issues

The fundamental flaws in the measurement and verification approaches affect all the approaches to estimated savings including the upstream, midstream, downstream and direct install programs.

These other methods operate through a network of partnerships with distributors and installers of energy products. These partners also include energy service companies, lighting contractors, energy efficiency fulfillment companies, and utilities. The types of projects implemented by these partners include, but are not limited to, lighting products, HVAC, chilled water systems, motors, variable speed drives, air compressors, envelope sealing for spaces, showerheads, appliances, uninterruptible power supplies, set top cable boxes and window attachments.

EE providers convert the sales data collected from their midstream and upstream partners into an estimate of the number of MW of energy consumption that, based on unsupported assumptions, would result from the product's asserted use. The same approach is used for the other products and projects. Such EE MW are not directly measured. Savings are calculated based on an assumed installation rate and assumed usage level, compared to the assumed electricity usage of the assumed default. The inputs to these calculations are based on assumptions, outdated industry publications, and inferences from limited data samples. EE providers do not generally provide evidence that they meet the statistical significance requirements of the PJM Market Rules.[22] The reported Nominated EE Value and Capacity Performance value must achieve at least a 10 percent relative precision

[22] PJM. "Manual 18B: Energy Efficiency Measurement & Verification," Rev. 05 (Sep. 21, 2022).

at a one-tailed 90 percent confidence level.[23] EE provider's savings calculations using stipulated values do not meet and cannot meet this requirement. Stipulated values refers to values used in calculations that are derived from TRMs or other reference materials rather than from EE providers directly measuring their own customers. Given the absence of robust actual measurement of the nominated projects, the Reports do not and cannot demonstrate that the claimed savings meet this tariff statistical test requirement. The EE providers use combinations of surveys and stipulated values from dated, inapplicable or non-PJM resources, whose underlying statistical methods are often unknown, to claim to meet this requirement. Many EE providers rely on usage assumptions from industry publications rather than from primary data collected from measurements of their own customers. A commonly referenced document in supporting Post Installation Measurement & Verification reports is the Maryland/Mid-Atlantic Technical Reference Manual (TRM) facilitated and managed by Northeast Energy Efficiency Partnerships, a 501 (c)(3) non-profit organization funded by various EE industry advocacy groups and the federal government.[24] [25] While this manual focuses on a geographic region that is part of PJM's service territory, EE Providers can and do also use assumptions based on installations in locations outside of PJM's service territory or outside the area referenced by the TRM. The technical reference manuals (TRM) referenced by EE providers are at least several years old and therefore do not include the actual current baseline conditions that should be used for the valuation of projects. Given the TRM development cycle, the data underlying the TRM lags the publishing date by several years. Of TRMs frequently referenced by EE providers, the Maryland/Mid-Atlantic TRM was published in 2020, the Pennsylvania TRM in 2024 and

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[23] PJM. "Manual 18B: Energy Efficiency Measurement & Verification," § 10.1 Rev. 05 (Sep. 21, 2022).

[24] *See* Maryland/Mid-Atlantic Technical Reference Manual Version 10 (May 27, 2020) <*https://neep.org/mid-atlantic-technical-reference-manual-trm-v10*>.

[25] *See* Northeast Energy Efficiency Partnership (March 4, 2024), <*https://neep.org/* >.

the Ohio TRM in 2019. The Pennsylvania PUC updates and approves its TRM on a 5-year cycle.[26] As a result, for the normal three year capacity market timing, a three year old TRM, relying on data from as much as five years prior to publication, is used to estimate savings for at least four years into the future. As a result, in the fourth year of the EE resource, its purported savings will be based on data from 15 years earlier. That is not a reasonable basis for calculating savings. In addition to Technical Reference Manuals, other studies and references are cited in EE M&V Plans and Reports. These citations are likewise used to justify the claimed benefits and savings attributed to EE projects. These materials, as with the TRMs, are generally several years out of date and commonly 10 years old and in some cases older and when they include more current publication dates it is not clear whether the underlying data was updated.

It is unclear from the reports whether the appropriate baseline conditions, Current Load Baseline or Standard Baseline, are being consistently applied by the EE providers when estimating savings. The Standard Baseline is for projects in which equipment (whether failed or not) is replaced by a more efficient equivalent or by an alternative strategy for delivering comparable output. In this case, the baseline condition is determined as the nameplate rating of the equipment meeting the level of efficiency required by applicable state code, federal product efficiency standard, or standard practice, whichever is most stringent, in place at the time of installation, as known at the time of commitment. If there is no applicable state code or federal standard, then standard practice is used as the basis for establishing baseline conditions. By contrast, the Current Load Baseline is for projects in which replacement, modification or removal of equipment and controls in systems or buildings are not planned independently of the Energy Efficiency initiative that is being offered into the RPM Auction. The Baseline Condition in this case is the load of the existing equipment across the EE Performance Hours and winter performance hours under

[26] 66 PA § 2806.1(c)(3).

pre-retrofit conditions. To be eligible to use the Current Load Baseline, the EE provider is required to document the nature of the project such that it can be reasonably assumed that the replacement, removal or retrofit would not have occurred in the absence of the Energy Efficiency initiative. In addition, the replacement of equipment must be with equipment that is better than the standards in place at the time of installation, as known at the time of commitment. Again, if there is no applicable state code or federal standard, then standard practice must be used as the basis for establishing Baseline Conditions. [27] It is not clear from the reports that the requisite conditions are satisfied and that these baselines are correctly and consistently applied.

When electing one of the four defined measurement and verification methods, regardless of the type of claimed EE measure, it is not clear when EE providers elected Option A: Partially Measured Retrofit Isolation/Stipulated Measurement, or that it was actually applied consistent with the requirements in PJM Manual 18B.[28] Option A is intended for measures where either performance factors (such as lighting wattage) or operational factors (such as operating hours) can be measured on a spot or short-term basis during baseline establishment and post installation periods, or for measures for which a measured proxy variable can, in combination with well-established algorithms and/or stipulated factors, provide an *accurate* (emphasis added) estimate of the Nominated EE Value and Capacity Performance Value.[29] Given the outright absence or lack of robust actual measurement of the nominated projects, the savings estimates can hardly be characterized as being *accurate*. Many values used in the determination of savings rely on

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[27] PJM. "Manual 18B: Energy Efficiency Measurement & Verification," § 8.1 Rev. 05 (Sep. 21, 2022).

[28] Other M&V methods are Option B: Retrofit Isolation/Metered Equipment, Option C: Whole Facility/Regression, Option D: Calibrated Simulation and Other Acceptable Measurement and Verification Methodologies which include Engineering Calculations and Audit Results and Load Shape Analyses.

[29] PJM. "Manual 18B: Energy Efficiency Measurement & Verification," § 7.1 Rev. 05 (Sep. 21, 2022).

dated studies or those from inapplicable or non-PJM jurisdictions. Verification of previously installed projects likewise rely on customer surveys to establish key performance variables which belies the accuracy of the claimed energy savings. These approaches do not meet the statistical significance threshold defined in the tariff.

E. Contractual Rights

A capacity market seller may submit a Sell Offer for a capacity resource in a base residual auction or incremental auction only if such seller owns or has the contractual authority to control the output or load reduction capability of such resource and has not transferred such authority to another entity prior to submitting such Sell Offer. [30] Capacity resources must satisfy the capability and deliverability requirements of RAA, Schedule 9 and RAA, Schedule 10, the requirements for demand resources or EE resources in Tariff, Attachment DD-1 and RAA, Schedule 6, as applicable, and, the criteria in Tariff, Attachment DD, section 5.5A.

An EE resource is a project, including installation of more efficient devices or equipment or implementation of more efficient processes or systems, exceeding then-current building codes, appliance standards, or other relevant standards, designed to

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[30] A "Capacity Market Seller" is defined to mean "a Member that owns, or has the contractual authority to control the output or load reduction capability of, a Capacity Resource, that has not transferred such authority to another entity, and that offers such resource in the Base Residual Auction or an Incremental Auction." OATT § 1 (Definitions C–D). A "Capacity Resource" is defined to mean "megawatts of (i) net capacity from Existing Generation Capacity Resources or Planned Generation Capacity Resources meeting the requirements of the Reliability Assurance Agreement, Schedules 9 and Reliability Assurance Agreement, Schedule 10 that are or will be owned by or contracted to a Party and that are or will be committed to satisfy that Party's obligations under the Reliability Assurance Agreement, or to satisfy the reliability requirements of the PJM Region, for a Delivery Year; (ii) net capacity from Existing Generation Capacity Resources or Planned Generation Capacity Resources not owned or contracted for by a Party which are accredited to the PJM Region pursuant to the procedures set forth in such Schedules 9 and 10; or (iii) load reduction capability provided by Demand Resources or Energy Efficiency Resources that are accredited to the PJM Region pursuant to the procedures set forth in the Reliability Assurance Agreement, Schedule 6." RAA § 1–Definitions.

achieve a continuous (during peak summer and winter periods as described herein) reduction in electric energy consumption at the End-Use Customer's retail site that is not reflected in the peak load forecast prepared for the delivery year for which the EE resource is proposed, and that is fully implemented at all times during such delivery year, without any requirement of notice, dispatch, or operator intervention.[31]

The PIMV Reports do not demonstrate that the EE resources for which payment is requested meet that standard.

Section 5.5 of the PJM OATT requires that a capacity market seller may submit a Sell Offer for a capacity resource in a base residual auction or incremental auction only if such seller owns or has the contractual authority to control the output or load reduction capability of such resource. There is no evidence to support any assertions that any partner agreements supporting midstream and upstream programs legally convey, to the Indicated Energy Efficiency Sellers, the capacity rights to the products purchased by end-use customers. Such agreements and any related contracts have not been provided by Indicated Energy Efficiency Sellers. The program partner agreements purport to transfer the capacity rights associated with end use customer products and projects to Indicated Energy Efficiency Sellers even though the program partner themselves never owned the projects or products. The end use customers own those projects by installing energy-saving devices and equipment, and there is no evidence that Indicated Energy Efficiency Sellers were involved in a direct exclusive contract with those customers. There is no evidence that Indicated Energy Efficiency Sellers through midstream and upstream programs provided legally required consideration to any end-users for the rights to their projects or products. The Indicated Energy Efficiency Sellers therefore are not the owners of the requisite contractual rights required by the PJM Tariff to be eligible to receive revenues from the PJM Capacity Market.

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[31] OA Attachment DD-1 § L.1.

III. COMPLAINT

In their Reports, the Indicated Energy Efficiency Sellers fail to demonstrate that their midstream and upstream programs cause any reductions in energy consumption or changes in behavior by end-use customers. The same is true for the other programs for which EE savings are submitted by Indicated Energy Efficiency Sellers. The Indicated Energy Efficiency Sellers fail to show any contractual relationship with end-use customers, and they fail to establish legal rights to any reductions in energy usage required to be eligible to receive energy efficiency payments from PJM. The Indicated Energy Efficiency Sellers provide no evidence or inadequate evidence that their actions result in end use customers reducing their energy consumption below what it would have been otherwise, including failure to demonstrate that they meet required tests of statistical significance; reliance on outdated and irrelevant baseline data; and failure to adequately support leakage assumptions. It is not just and reasonable to pay Indicated Energy Efficiency Sellers anything absent a definitive showing that the submitted programs and measures meet the tariff standards.

A. Indicated Energy Efficiency Seller Have Failed to Demonstrate that Submitted Programs Result in a Reduction in Energy Usage.

The PJM OA defines an EE resource as a project, including installation of more efficient devices or equipment or implementation of more efficient processes or systems, exceeding then current building codes, appliance standards, or other relevant standards, designed to achieve a continuous reduction in electric energy consumption at the End-Use Customer's retail site that is not reflected in the peak load forecast prepared for the delivery year. EE resources are required to cause reductions in energy consumption at an end use customer's location. EE resources are required to reduce energy usage compared to what the customer would have done otherwise. The causation requirement for EE resources may be found in North American Energy Standards Board energy efficiency standards. Standard WEQ-021-3.1.1, states that "[a]n Energy Efficiency Resource may participate in wholesale markets where there is a verified permanent load reduction behind the distribution meter

resulting from installation of Energy Efficiency equipment, processes, or systems."[32] Standards WEQ-021-1.1 and WEQ-0.0.0 require ISOs and RTOs to establish M&V methodologies that "determin[e] reductions in usage and/or demand resulting from Demand Response or Energy Efficiency."[33] NAESB Standard WEQ-021-3.2.9 requires EE resource providers to submit M&V plans that "include a detailed description of calculations used to establish Energy Efficiency Baseline and actual Demand Reduction Value." NAESB defines "Energy Efficiency Baseline" as "[e]nergy usage that would have occurred without implementation of the subject measure or project."[34] [35]

Indicated Energy Efficiency Sellers' midstream and upstream programs simply aggregate sales data of products that end use customers independently made the decision to purchase, claim to own the associated rights to assumed energy savings and submit the sales receipts together with unsupported assumptions about actual usage to support payments under the PJM capacity market construct.

Indicated Energy Efficiency Sellers' other programs base their asserted savings on methods that do not comply with the tariff requirements, do not prove asserted savings and do not establish contractual rights to any asserted savings.

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[32] NAESB, WEQ-021-1.1, Measurement and Verification of Energy Efficiency Products (WEQ Version 003.3, Mar. 30, 2020)

[33] NAESB, WEQ-000, Standards and Models Relating to Abbreviations, Acronyms, and Definition of Terms (Mar. 20, 2020).

[34] NAESB, WEQ-021-3.2, Measurement and Verification of Energy Efficiency Products (WEQ Version 003.3, Mar. 30, 2020)

[35] NAESB, WEQ-000, NAESB Abbreviations, Acronyms, and Definition of Terms (WEQ Version 003.3, Mar. 30, 2020)

B. Indicated Energy Efficiency Sellers' Submitted Midstream and Upstream Programs Do Not Meet the Requirement of Addressing Energy Consumption at End Use Customer Locations.

Indicated Energy Efficiency Seller's midstream and upstream programs do not cause reductions in energy consumption. The PJM OA defines an EE resource as a project designed to achieve a continuous reduction in electric energy consumption at the End-Use Customer's retail site. In its 2017 decision in Advanced Energy Economy, FERC held that EE resources in PJM are "by definition, composed of retail customer actions that reduce load."[36] Indicated Energy Efficiency Sellers' midstream and upstream programs do not establish a causal or contractual link between Sellers' actions, the actual retail sale of devices like light bulbs, the actual use of any devices by specific customers, or any actual reductions in energy usage.

Even if all the assumed behaviors were supported, which they are not, Indicated Energy Sellers have not demonstrated that they know who the customers are, that they know anything about how the customers use the products, that they have ownership rights to those savings or that they should be paid under the capacity market construct. The Indicated Energy Sellers instead aggregate sales data (receipts) of products that end use customers independently made the decision to purchase, claim to own the associated capacity rights and submit this data to PJM to support payment under the capacity market construct.

In other cases, Indicated Energy Efficiency Sellers' programs fail to demonstrate savings because they do not follow the tariff requirements, including meeting required statistical tests and having correctly defined baselines.

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[36] *Advanced Energy Economy*, 161 FERC ¶ 61,245 at P 59 (2017).

C. Energy Efficiency Payments Are Not Part of the Capacity Market and Have No Impact on Resource Adequacy.

According to the PJM OATT and RAA, EE MW should not be and are not included in the PJM Capacity Market.[37] [38] EE MW are not included in the PJM Capacity Market. EE MW are nonetheless paid the capacity market clearing price and, while not part of the PJM Capacity Market, are part of the PJM capacity construct as a result.

D. The PIMV Reports Do Not Provide a Just and Reasonable Basis for Payments to the Indicated Energy Efficiency Providers.

Indicated Energy Efficiency Providers must meet the following requirement in the RAA to be paid for EE:

> For every Energy Efficiency Resource clearing an RPM Auction for a Delivery Year, the Capacity Market Seller shall submit to the Office of the Interconnection, by no later than the start of such Delivery Year, an updated project status and detailed measurement and verification data meeting the standards for precision and accuracy set forth in the PJM Manuals.[39]

The RAA provides for PJM to determine a value of EE supported by the report:

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[37] OATT Attachment DD-1 § L.1.

[38] RAA Schedule 6 § L.1.

[39] RAA Schedule 6 § L.6; PJM Manual 18B at 12 states: "The last Post-Installation M&V Report submitted and approved by PJM prior to the Delivery Year that the EE Resource is committed establishes the final Nominated EE Value and Capacity Performance value that is used to measure RPM Commitment Compliance during the Delivery Year. The final Nominated EE Value establishes the installed capacity value of an EE Resource for the summer period of June through October and May of the Delivery Year. The Capacity Performance value establishes the installed capacity value of an EE Resource for the non-summer period of November through April of the Delivery Year. Details regarding RPM Commitment Compliance and the associated penalty for failure to deliver the unforced value of an RPM capacity commitment (i.e., Capacity Resource Deficiency Charge) are provided in PJM Manual for PJM Capacity Market (M-18)."

> The final value of the Energy Efficiency Resource during such Delivery Year shall be as determined by the Office of the Interconnection based on the submitted data.[40]

The RAA further provides for PJM to perform audits of EE:

> The Office of the Interconnection may audit, at the Capacity Market Seller's expense, any Energy Efficiency Resource committed to the PJM Region. The audit may be conducted any time including the Performance Hours of the Delivery Year.[41]

PJM Manual 18B states (at 20) that the initial post installation reports should include:

- Cover page with list of changes/updates contained in the Initial Post Installation M&V Report
- Details of any changes between the prior Updated M&V Plan and as-built conditions, and any changes to the estimated demand and energy reductions
- Detailed list of installed equipment
- Documentation of all post installation verification activities (verifying that the equipment/systems were installed and are operating)
- Documentation of performance measurements conducted to validate the Nominated EE Value and Capacity Performance value of the EE Resource (if applicable in accordance with the approved M&V Plan)

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40 RAA Schedule 6 § L.6.

41 RAA Schedule 6 § L.7; PJM Manual 18B states at 12: "PJM reserves the right to audit the results presented in an Initial or Updated Post-Installation M&V Report. The M&V Audit may be conducted any time, including during the defined EE Performance Hours. If the M&V Audit is performed and results finalized prior to the start of a Delivery Year, the Nominated EE Value and Capacity Performance value confirmed by the Audit becomes the Final Nominated EE Value and Capacity Performance value that is used to measure RPM Commitment Compliance during the Delivery Year. If the M&V Audit is performed and results finalized after the start of a Delivery Year, the Nominated EE Value and Capacity Performance value confirmed by the M&V Audit becomes the basis to determine if any incremental RPM Commitment Compliance Shortfall needs to be assessed retroactively from June 1 of the Delivery Year to May 31 of the Delivery Year.".

- Detail any changes to the Nominated EE Value and Capacity Performance value of the EE Resource

The Reports fail to satisfy the requisite criteria for approval. The Reports fail to adequately demonstrate exactly where the measures were installed. As a result, there is only a description of the types of equipment but no actual list of installed equipment or actual end use customer locations. There is only a general post installation review based on assumptions and no actual documented post installation verification of actual installations by customer location. The Reports do not provide the contracts or agreements needed to establish that the Indicated Energy Efficiency Sellers have any ownership rights associated with the equipment, have the legal ability to evaluate the behavior of the end use customers, including confirmation of the installation locations of EE measures they claim to have installed. Review of the agreements is also needed to determine whether the Indicated Energy Efficiency Sellers have valid legal rights to the results of any behavior that creates any EE. There is no way to ensure that any such legal rights have not also been sold to others, potentially resulting in duplicate EE. The Indicated Energy Efficiency Sellers do not establish that they know the identity of any or all of the end use customers that are asserted to be providing EE. Because the Reports do not contain the information indicated in PJM Manual 18B, PJM does not have the ability to conduct audits during the delivery year that the RAA provides for.

Because the Reports provide no basis for determining that the Indicated Energy Efficiency Sellers have provided any energy efficiency relevant to PJM or PJM customers, it is unjust and unreasonable to require PJM customers to pay, in the aggregate, any part of the $148 million for EE that has not been demonstrated to exist. PJM should not make payment, and the Indicated Energy Efficiency Sellers are not entitled to and should be directed not to take payment for, any EE during the 2025/2026 Delivery Year based on the filed Reports.

The Indicated Energy Efficiency Sellers, if they continue to seek payment, should be directed to file reports revised to provide the information required to show that energy

efficiency has been provided to PJM. There should be no presumption that a valid explanation exists.

If the Commission determines that additional review of those Reports submitted consistent with the PJM RAA deadlines is required, the Market Monitor recommends that the Commission set the Complaint for hearing and discovery, which would allow for the investigation of whether, and, if so, to what extent, the Indicated Energy Efficiency Sellers have provided EE to PJM. To conduct the fact intensive investigation that would be required, to develop a record basis for a decision, and to avoid unnecessary delay, there is no reason to delay a hearing by first initiating settlement judge proceedings. Such settlement judge proceedings cannot be expected to resolve factual disputes. Instead, a hearing judge should be appointed in order to evaluate the facts. The goal would be to determine whether the Indicated Energy Efficiency Sellers have provided any identifiable EE and to determine the value of any such EE. The development of a record based on compulsory discovery would enhance the ability to reach a timely resolution of the issues raised in this Complaint.

IV. RULE 206 REQUIREMENTS

A. Rule 206(b)(1): Action or Inaction Alleged to Violate Statutory Standards or Regulatory Requirements

The Reports provided by each of the Indicated Energy Efficiency Sellers do not support payment for capacity for the 2025/2026 Delivery Year, none of the Indicated Energy Efficiency Sellers should receive payment.

B. Rule 206(b)(2): Legal Bases for Complaint

The legal bases for this Complaint are set forth in detail in Section III.

C. Rules 206(b)(3) and 206(b)(4): Issues Presented as They Relate to the Complainant and Quantification of Financial Impact on Complainant

PJM customers should not pay any portion of the more than $148 million for Energy Efficiency for the 2025/2026 Delivery Year to the Indicated Energy Efficiency Sellers for alleged EE that has not been shown to exist.

D. Rule 206(b)(5): Nonfinancial Impacts on Complainant

Not applicable.

E. Rule 206(b)(6): Related Proceedings

A complaint raising substantially thesame issues was filed on May 31, 2024, in Docket No. EL24-113. A partial settlement was filed regarding certain state regulated utilities that resolves the complaint for those parties based on attestations provided by those parties. The complaint and the settlement are both pending in Docket No. EL24-113. Based on substantially identical attestations provided by or to be provided by state regulated utilities, no state regulated utilities are named in this Complaint. Complainant is not aware of any other pending proceedings that are directly related to the issues raised in this Complaint.

F. Rule 206(b)(7): Specific Relief Requested

The Indicated Energy Efficiency Sellers are not entitled to and should be directed to not take payment from PJM for EE described in the reports filed May 7 and 9, 2025, during the 2025/2026 Delivery Year.

A. Rule 206(b)(8): Documents that Support the Complaint

This pleading and its attachments support the Complaint.

B. Rule 206(b)(9): Dispute Resolution

The Market Monitor has not contacted the Enforcement Hotline or Dispute Resolution Service or made use of the tariff-based dispute resolution mechanisms. Such mechanisms are neither intended nor appropriate for resolving disputes of this nature.

C. Rule 206(b)(10): Form of Notice

A form of notice suitable for publication in the Federal Register is included as an Attachment B.

D. Rule 206(c): Service on Respondent

The Market Monitor certifies that copies of this Complaint were served by email on each respondent in the Indicated Energy Efficiency Seller listed in the table in Section I.

V. COMMUNICATIONS

All communications with respect to this pleading and in connection with this proceeding should be addressed to the following:

Joseph E. Bowring[42]
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

Jeffrey W. Mayes[43]
General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

[42] Designated to receive service.

[43] Designated to receive service.

VI. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to the arguments raised in this Complaint as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,

Jeffrey W. Mayes

General Counsel
Monitoring Analytics, LLC
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Dated: May 29, 2025

ATTACHMENT A

Protective Agreement

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Independent Market Monitor for PJM	)	**Docket No. EL25-___-000**
v.	)	
Indicated Energy Efficiency Sellers	)	

PROTECTIVE AGREEMENT

This Protective Agreement is entered into this _____ day of _____, ____, by and between the Independent Market Monitor for PJM (Monitoring Analytics, LLC) ("Complainant") and _____ ("Respondent/Intervenor"), and shall govern the use of all Privileged Material, as defined herein, submitted by Complainant or Respondent/Intervenor to the Federal Energy Regulatory Commission (the "Commission") in this proceeding. Complainant and Respondent/Intervenor are referred to herein individually as a "Party" and jointly as "Parties."

1. The complaint ("Complaint") filed by Complainant in the above-captioned proceeding included documents that contained Privileged Material. Respondent/Intervenor is a "participant" in such proceeding, as such term is defined in 18 C.F.R. § 385.102(b), or has filed a timely motion to intervene or a notice of intervention in such proceeding. The Parties enter into this Protective Agreement to govern the use of Privileged Material or CEII produced by Complainant or Respondent/Intervenor in the above-referenced proceeding. Notwithstanding any order terminating such proceeding, this Protective Agreement shall remain in effect unless and until specifically modified or terminated jointly by the Parties or by the Commission or a court of competent jurisdiction.

2. The Commission's regulations[1] and its policy governing the labelling of controlled unclassified information ("CUI"),[2] establish and distinguish the respective designations of Privileged Material and CEII. As to these designations, this Protective Agreement provides that a Party:

   A. *may* designate as Privileged Material any material which customarily is treated by that Party as commercially sensitive or proprietary or material subject to a legal privilege, which is not otherwise available to the public, and which, if disclosed,

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[1] *Compare* 18 C.F.R. § 388.112, *with* 18 C.F.R. § 388.113. This Protective Agreement does not alter the respective requirements imposed by these sections on Privileged Material or CEII.

[2] *Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff*, 82 Fed. Reg. 18,632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

would subject that Party or its customers to risk of competitive disadvantage or other business injury; and

B. *must* designate as CEII, any material that meets the definition of that term as provided by 18 C.F.R. §§ 388.113(a), (c).

3. For the purposes of this Protective Agreement, the listed terms are defined as follows:

A. Party(ies): As defined above.

B. Privileged Material:[3]

i. Material (including depositions) provided by a Party in response to discovery requests or filed with the Commission, and that is designated as Privileged Material by such Party;[4]

ii. Material that is privileged under federal, state, or foreign law, such as work-product privilege, attorney-client privilege, or governmental privilege, and that is designated as Privileged Material by such Party;[5]

iii. Any information contained in or obtained from such designated material;

iv. Any other material which is made subject to this Protective Agreement by the Commission, any court, or other body having appropriate authority, or by agreement of the Parties;

v. Notes of Privileged Material (memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Privileged Material);[6] or

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[3] The Commission's regulations state that "[f]or the purposes of the Commission's filing requirements, non-CEII subject to an outstanding claim of exemption from disclosure under FOIA will be referred to as privileged material." 18 C.F.R. § 388.112(a). The regulations further state that "[f]or material filed in proceedings set for trial-type hearing or settlement judge proceedings, a participant's access to material for which privileged treatment is claimed is governed by the presiding official's protective order." 18 C.F.R. § 388.112(b)(2)(v).

[4] *See infra* P 11 for the procedures governing the labeling of this designation.

[5] The Commission's regulations state that "[a] presiding officer may, by order …. restrict public disclosure of discoverable matter in order to …. [p]reserve a privilege of a participant…." 18 C.F.R. § 385.410(c)(3). To adjudicate such privileges, the regulations further state that "[i]n the absence of controlling Commission precedent, privileges will be determined in accordance with decisions of the Federal courts with due consideration to the Commission's need to obtain information necessary to discharge its regulatory responsibilities." 18 C.F.R. § 385.410(d)(1)(i).

[6] Notes of Privileged Material are subject to the same restrictions for Privileged Material except as specifically provided in this Protective Agreement.

vi. Copies of Privileged Material.

vii. Privileged Material does not include:

a. Any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be privileged by such agency or court;

b. Information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Agreement; or

C. Critical Energy/Electric Infrastructure Information (CEII): As defined at 18 C.F.R. §§ 388.113(a), (c).

D. Non-Disclosure Certificate: The term "Non-Disclosure Certificate" means the certificate attached to this Protective Agreement, by which individuals granted access to Privileged Material, and/or CEII must certify their understanding that such access to such material is provided pursuant to the terms and restrictions of this Protective Agreement, and that such Parties have read the Protective Agreement and agree to be bound by it.

E. Reviewing Representative: A person who has signed a Non-Disclosure Certificate and who is:

i. Commission Trial Staff designated as such in this proceeding;

ii. An attorney who has made an appearance in this proceeding for a Party;

iii. Attorneys, paralegals, and other employees associated for purposes of this case with an attorney who has made an appearance in this proceeding on behalf of a Party;

iv. An expert or an employee of an expert retained by a Party for the purpose of advising, preparing for, submitting evidence or testifying in this proceeding;

v. A person designated as a Reviewing Representative by order of the Commission; or

vi. Employees or other representatives of a Party appearing in this proceeding with significant responsibility for this docket.

4. Privileged Material and/or CEII shall be made available under the terms of this Protective Agreement only to Parties and only to their Reviewing Representatives as provided in Paragraphs 6-10 of this Protective Agreement. The contents of Privileged Material, CEII

or any other form of information that copies or discloses such materials shall not be disclosed to anyone other than in accordance with this Protective Agreement and shall be used only in connection with this specific proceeding.

5. All Privileged Material and/or CEII must be maintained in a secure place. Access to those materials must be limited to Reviewing Representatives specifically authorized pursuant to Paragraphs 7-9 of this Protective Agreement.

6. Privileged Material and/or CEII must be handled by each Party and by each Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9 of this Protective Agreement. Privileged Material and/or CEII shall not be used except as necessary for the conduct of this proceeding, nor shall they (or the substance of their contents) be disclosed in any manner to any person except a Reviewing Representative who is engaged in this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may receive Privileged Material and/or CEII that originated from the party or affiliate of the party that they represent. Reviewing Representatives of parties who are sellers of energy efficiency shall not receive or have access to Privileged Material and/or CEII that originates from an unaffiliated party unless an order of the Commission finds that such representatives have demonstrated need and have included safeguards to protect competition. Reviewing Representatives may make copies of Privileged Material and/or CEII, but such copies automatically become Privileged Material and/or CEII. Reviewing Representatives may make notes of Privileged Material, which shall be treated as Notes of Privileged Material if they reflect the contents of Privileged Material.

7. If a Reviewing Representative's scope of employment includes any of the activities listed under this Paragraph 7, such Reviewing Representative may not use information contained in any Privileged Material and/or CEII obtained in this proceeding for a commercial purpose (e.g. to give a Party or competitor of any Party a commercial advantage):

   A. Energy marketing;

   B. Direct supervision of any employee or employees whose duties include energy marketing; or

   C. The provision of consulting services to any person whose duties include energy marketing.

8. If a Party wishes to designate a person not described in Paragraph 3(E) above as a Reviewing Representative, the Party must seek agreement from the Party providing the Privileged Material and/or CEII. If an agreement is reached, the designee shall be a Reviewing Representative pursuant to Paragraph 3(E) of this Protective Agreement with respect to those materials. If no agreement is reached, the matter must be submitted to the Commission for resolution.

9. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Privileged Material and/or CEII pursuant to this Protective Agreement until three business days after that Reviewing Representative

first has executed and served a Non-Disclosure Certificate.[7] However, if an attorney qualified as a Reviewing Representative has executed a Non-Disclosure Certificate, any participating paralegal, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. Attorneys designated Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Agreement, and must take all reasonable precautions to ensure that Privileged Material and/or CEII are not disclosed to unauthorized persons.

10. Any Reviewing Representative may disclose Privileged Material and/or CEII to any other Reviewing Representative as long as both Reviewing Representatives have executed a Non-Disclosure Certificate. In the event any Reviewing Representative to whom Privileged Material and/or CEII are disclosed ceases to participate in this proceeding, or becomes employed or retained for a position that renders him or her ineligible to be a Reviewing Representative under Paragraph 3(D) of this Protective Agreement, access to such materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Agreement and the Non-Disclosure Certificate for as long as the Protective Agreement is in effect.[8]

11. All Privileged Material and/or CEII in this proceeding filed with the Commission or submitted to any Commission personnel, must comply with the Commission's *Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff*.[9] Consistent with those requirements:

    A. Documents that contain Privileged Material must include a top center header on each page of the document with the following text: CUI//PRIV. Any corresponding electronic files must also include this text in the file name.

    B. Documents that contain CEII must include a top center header on each page of the document with the following text: CUI//CEII. Any corresponding electronic files must also include this text in the file name.

    C. Documents that contain both Privileged Material and CEII must include a top center header on each page of the document with the following text: CUI//CEII/PRIV. Any corresponding electronic files must also include this text in the file name.

    D. The specific content on each page of the document that constitutes Privileged Material and/or CEII must also be clearly identified. For example, lines or

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[7] During this three-day period, a Party may file an objection with the Commission contesting that an individual qualifies as a Reviewing Representative, and the individual shall not receive access to the Privileged Material and/or CEII until resolution of the dispute.

[8] *See infra* P 19.

[9] 82 Fed. Reg. 18,632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

individual words or numbers that include both Privileged Material and CEII shall be prefaced and end with "BEGIN CUI//CEII/PRIV" and "END CUI//CEII/PRIV".

12. If any Party desires to include, utilize, or refer to Privileged Material or information derived from Privileged Material in testimony or other exhibits during the hearing in this proceeding in a manner that might require disclosure of such materials to persons other than Reviewing Representatives, that Party first must notify counsel for the disclosing Party, and identify all such Privileged Material. Thereafter, use of such Privileged Material will be governed by procedures determined by the Commission.

13. Nothing in this Protective Agreement shall be construed as precluding any Party from objecting to the production or use of Privileged Material and/or CEII on any appropriate ground.

14. Nothing in this Protective Agreement shall preclude any Party from requesting the Commission or any other body having appropriate authority to find this Protective Agreement should not apply to all or any materials previously designated Privileged Material pursuant to this Protective Agreement. The Commission or any other body having appropriate authority may alter or amend this Protective Agreement as circumstances warrant at any time during the course of this proceeding.

15. Each Party governed by this Protective Agreement has the right to seek changes in it as appropriate from the Commission or any other body having appropriate authority.

16. Subject to Paragraph 18, the Commission shall resolve any disputes arising under this Protective Agreement pertaining to Privileged Material according to the following procedures. Prior to presenting any such dispute to the Commission, the Parties to the dispute shall employ good faith best efforts to resolve it.

    A. Any Party that contests the designation of material as Privileged Material shall notify the Party that provided the Privileged Material by specifying in writing the material for which the designation is contested.

    B. In any challenge to the designation of material as Privileged Material, the burden of proof shall be on the Party seeking protection. If the Commission finds that the material at issue is not entitled to the designation, the procedures of Paragraph 18 shall apply.

    C. The procedures described above shall not apply to material designated by a Party as CEII. Material so designated shall remain subject to the provisions of this Protective Agreement, unless a Party requests and obtains a determination from the Commission's CEII Coordinator that such material need not retain that designation.

17. The designator will have five (5) days in which to respond to any pleading requesting disclosure of Privileged Material. Should the Commission determine that the information should be made public, the Commission will provide notice to the designator no less than five (5) days prior to the date on which the material will become public. This Protective Agreement shall automatically cease to apply to such material on the sixth (6th) calendar

day after the notification is made unless the designator files a motion with the Commission, with supporting affidavits demonstrating why the material should continue to be privileged. Should such a motion be filed, the material will remain confidential until such time as the interlocutory appeal or certified question has been addressed by the Motions Commissioner or Commission, as provided in the Commission's regulations, 18 C.F.R. §§ 385.714, .715. No Party waives its rights to seek additional administrative or judicial remedies after a decision regarding Privileged Material or the Commission's denial of any appeal thereof or determination in response to any certified question. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act (5 U.S.C. § 552) for Privileged Material and/or CEII in the files of the Commission.

18. Privileged Material and/or CEII shall remain available to Parties until the later of 1) the date an order terminating this proceeding no longer is subject to judicial review, or 2) the date any other Commission proceeding relating to the Privileged Material and/or CEII is concluded and no longer subject to judicial review. After this time, the Party that produced the Privileged Material and/or CEII may request (in writing) that all other Parties return or destroy the Privileged Material and/or CEII. This request must be satisfied with within fifteen (15) days of the date the request is made. However, copies of filings, official transcripts and exhibits in this proceeding containing Privileged Material, or Notes of Privileged Material, may be retained if they are maintained in accordance with Paragraph 5 of this Protective Agreement. If requested, each Party also must submit to the Party making the request an affidavit stating that to the best of its knowledge it has satisfied the request to return or destroy the Privileged Material and/or CEII. To the extent Privileged Material and/or CEII are not returned or destroyed, they shall remain subject to this Protective Agreement.

19. Regardless of any order terminating this proceeding, this Protective Agreement shall remain in effect until specifically modified or terminated by the Commission. All CEII designations shall be subject to the "[d]uration of the CEII designation" provisions of 18 C.F.R. § 388.113(e).

20. Any violation of this Protective Agreement and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

21. Neither Party waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Privileged Material, including but not limited to indemnification for unwarranted release of Privileged Material and injunctive relief.

IN WITNESS WHEREOF, the Parties each have caused this Protective Agreement to be signed by their respective duly authorized representatives as of the date first set forth above.

By: _____ By: _____

Name: Jeffrey W. Mayes	Name:
Title: Monitoring Analytics, LLC (IMM)	Title:
Representing Complainant	Representing Respondent/Intervenor

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Independent Market Monitor for PJM	)	**Docket No. EL25-___-000**
v.	)	
Indicated Energy Efficiency Sellers	)	

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Privileged Material and/or Critical Energy/Electric Infrastructure Information ("CEII") is provided to me pursuant to the terms and restrictions of the Protective Agreement in this proceeding, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Privileged Material and/or CEII, any notes or other memoranda, or any other form of information that copies or discloses such materials, shall not be disclosed to anyone other than in accordance with the Protective Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Title: _____

Representing: _____

Date: _____

ATTACHMENT B

Draft Notice

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Independent Market Monitor for PJM	)	
v.	)	Docket No. EL25-___-000
Indicated Energy Efficiency Sellers	)	

NOTICE OF COMPLAINT

(____, 2025)

Take notice that on May 29, 2025, pursuant to section 206 of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR § 385.206 (2011), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (Complainant) filed a formal complaint against the Indicated Energy Efficiency Sellers (Respondents) requesting that the Commission direct Respondent not to take payment from PJM for Energy Efficiency described in the reports filed May 29, 2025, during the 2025/2026 Delivery Year.

The Complainant states that copies of the Complaint were served on representatives of the Respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on __, 2025.

Acting Secretary, Debbie –Anne A. Reese

ATTACHMENT C

Reports

[CUI//PRIV]