Pursuant to Rule 213 of the Federal Energy Regulatory Commission’s ("Commission") Rules of Practice and Procedure, PJM Interconnection, L.L.C. ("PJM") respectfully submits this answer ("Answer") in response to the Request for Rehearing filed by the Electric Power Supply Association ("EPSA") and the separate Motion for Clarification, or, in the Alternative, Rehearing of Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor"). As further explained below, EPSA’s position that Market Sellers should never be penalized if a non-compliant cost-based offer is corrected prior to PJM notifying such Market Seller is unreasonable and would create potential gaming opportunities. PJM also opposes the Market Monitor’s proposed revision to the language in the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement") to permit the Market Monitor to file a complaint or take other regulatory action whenever PJM and the Market Monitor disagree about whether a cost-based offer complies with

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2 For the purpose of this filing, capitalized terms not defined herein shall have the meaning as contained in the PJM Open Access Transmission Tariff, Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., or the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region.

3 For purposes of this filing, a non-compliant cost-based offer refers to an offer that is inconsistent with a Market Seller’s Fuel Cost Policy or Operating Agreement, Schedule 2.
a Market Seller’s Fuel Cost Policy or Operating Agreement, Schedule 2. Finally, should the Commission agree with the Market Monitor’s position that penalties begin applying based on either PJM or the Market Monitor’s notification of a Market Seller’s non-compliant cost-based offer, the Market Monitor must be required to inform PJM at the same time it notifies the Market Seller to ensure that the penalty amount can be accurately calculated.

I. MOTION FOR LEAVE TO ANSWER

The Commission’s rules provide that a party may answer requests for rehearing where the decisional authority permits the answer for good cause shown. In this case, PJM respectfully requests that the Commission grant PJM’s Motion for Leave to Answer and waive Rule 213 of the Commission’s Rules of Practice and Procedure because the Answer will help clarify the record and assist in the Commission’s decision-making process.

II. ANSWER

A. Market Sellers Should be Penalized for a Minimum of One Day for Non-Compliant Cost-Based Offers.

EPSA asserts that the Commission’s decision to allow PJM to assess penalties for a minimum of one day is inconsistent with its rationale that Market Sellers should not be retroactively penalized. In effect, EPSA argues that penalties should only be assessed if PJM notifies the Market Seller of a non-compliant cost-based offer before the offending offer ceases.

Such an outcome would be unjust and unreasonable as it could allow Market Sellers to knowingly submit non-compliant cost-based offers for short periods of time without any penalty by correcting such offers before PJM is able to determine and subsequently notify the Market Seller.

4 The Commission has allowed answers to rehearing requests. See, e.g., National Fuel Gas Supply Corporation, 164 FERC ¶ 61,084, at P 9 (2018) (accepting answers to a protest because “the Commission finds good cause to waive Rule 213(a)(2)’’); Algonquin Gas Transmission, L.L.C., 154 FERC ¶ 61,048, at P 2 (2016) (accepting answer to rehearing request because it assisted in the Commission’s decision-making process).

5 EPSA Rehearing at p. 7.
Seller of a penalty. Market Sellers should not be allowed to escape a minimum penalty of one
day as it could otherwise create gaming opportunities. For instance, if a Market Seller
intentionally submits a non-compliant cost-based offer on a day that it believes is beneficial and
PJM does not notify the Market Seller prior to the submission of a revised cost-based offer, the
Market Seller could benefit from the non-compliant cost-based offer while not being subject to
any penalties. Such behavior could adversely impact the market in the form of higher Locational
Marginal Prices and/or result in the unit not being properly dispatched. The penalty provisions
were clearly intended to discourage this sort of gaming behavior. In fact, the Commission
explicitly and correctly explained in the April 29 Order that “the purpose of the penalty structure
is to incentivize compliance for accurate cost-based offers and Fuel Cost Policies.” EPSA’s
approach, however, would allow for such gaming behavior to be undeterred if Market Sellers are
not penalized for a minimum of one day when non-compliant cost-based offers are removed
before PJM notifies the Market Seller of the violation.

Thus, the Commission’s April 29 Order appropriately explained that PJM “will apply the
penalty on a prospective basis after a Market Seller is notified, for a minimum of one day.”7 The
Market Seller would not, however, be subject to escalating penalties beginning with the first day
it made such a non-compliant cost-based offer, which would be unduly punitive since the Market
Seller would not have been notified of the ongoing issue at the time the non-compliant cost-
based offers were submitted.

While the escalating penalty should not retroactively apply to all past non-compliant cost-
based offers, the Market Seller should still be assessed a penalty for a minimum of one day to
deter market gaming behavior. Unlike the escalation penalty that results when all days are

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6 PJM Interconnection, L.L.C., 167 FERC ¶ 61,084 at P 32 (Apr. 29, 2019) (“April 29 Order”)
7 April 29 Order at P 31 (emphasis added).
included for a non-compliant cost-based offer, a one day penalty strikes the appropriate balance between unduly penalizing a Market Seller of a non-compliant cost-based offer prior to being notified of the offending offer, while maintaining an effective deterrent against potential gaming behavior that could adversely impact the markets.

The Commission’s April 29 Order correctly recognizes this balance, which was fully briefed in this record, and expressly provides the appropriate reasons for reaching this intended conclusion. Therefore, EPSA’s has not shown the Commission’s order is arbitrary and capricious or that it lacks reasoned decision making. EPSA’s request for rehearing is therefore without merit and should be denied.

B. The Market Monitor Should Only Be Authorized to Refer Market Sellers to the Office of Enforcement.

The Market Monitor asserts that the language in Operating Agreement, Schedule 2, section 6.1(d) should be further revised to remove and replace the reference regarding referral to the Commission’s Office of Enforcement with the ability to “file a complaint or take other appropriate regulatory action” when PJM and the Market Monitor do not agree on whether a cost-based offer complies with a Market Seller’s Fuel Cost Policy or with Operating Agreement, Schedule 2.

The language pertaining to the Office of Enforcement referrals is appropriate and should not be replaced because the Office of Enforcement is the proper branch of the Commission to address allegations of rule violations or improper Market Seller offers. As previously discussed,

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9 Operating Agreement, Schedule 2, section 6.1 was recently renumbered in a different compliance filing to Operating Agreement, Schedule 2, section 5.1. See PJM Interconnection, L.L.C., Compliance Filing Concerning Variable Operating and Maintenance Costs, Docket No. EL19-8-002 (May 24, 2019).

10 Market Monitor Rehearing at p. 5.
the Market Monitor’s authority to file complaints or initiate other regulatory proceedings, while still being part of the PJM organization, presents broad legal and policy questions. Until the Commission is prepared to resolve these issues, it would be inappropriate to expand the wording of the existing tariff as requested by the Market Monitor here.

C. The Market Monitor Must Inform PJM When it Notifies a Market Seller of a Non-Compliant Cost-Based Offer.

The Market Monitor seeks clarification, or in the alternative, rehearing, that the Commission’s order suggests that either PJM or the Market Monitor could place a Market Seller on notice of a non-compliant cost-based offer, while the language of Operating Agreement could be read in a way that only PJM may place a Market Seller on notice of a non-compliant cost-based offer. Specifically, the Market Monitor points to Operating Agreement, Schedule 2, section 6.1(a) which provides that the penalties are based on the number of days since PJM first notifies the Market Seller of a non-compliant cost-based offer.

PJM takes no position on whether penalties should commence upon notice from either PJM or the Market Monitor. However, if the Commission agrees that penalties commence upon notice from either PJM or the Market Monitor, the Commission should require that the Market Monitor inform PJM at the same time it notifies the Market Seller of a non-compliant cost-based offer. This is necessary because PJM must be aware of the potential violation in order to make the ultimate determination of whether the cost-based offer is inconsistent with the approved Fuel Cost Policy or Operating Agreement, Schedule 2. Further, informing PJM at the same time the

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11 PJM incorporates by reference its other filings on this topic as if fully set forth herein. See, e.g., PJM Interconnection, L.L.C., Request for Rehearing of PJM Interconnection, L.L.C., Docket No. ER16-372-007 (May 24, 2019); PJM Interconnection, L.L.C., Motion to Dismiss or, in the Alternative, Answer of PJM Interconnection, L.L.C., Docket No. EL19-27-000 (Jan. 25, 2019).

12 Market Monitor Rehearing at p. 2.
Market Seller is notified of a non-compliant cost-based offer will ensure that the penalty amount is correctly calculated based on the day the Market Seller is first notified.

III. CONCLUSION

Based on the foregoing, the Commission should (1) affirm its finding that Market Sellers that submit non-compliant cost-based offers should be subject to a minimum penalty of one day, (2) decline to require replacement of the referral to the Office of Enforcement language with complaint or other regulatory proceedings language when PJM and the Market Monitor disagree over a cost-based offer, and (3) to the extent the Commission agrees that either PJM or the Market Monitor may provide notification of a non-compliant cost-based offer, it should also clarify that the Market Monitor must inform PJM at the same time a Market Seller is notified of a non-compliant cost-based offer.

Respectfully submitted,

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Dated June 14, 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 Audubon, PA, this 14th day of June, 2019.

Chenchao Lu
Attorney for
PJM Interconnection, L.L.C.