

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

Wabash Valley Power Association, Inc.)	Docket No. EL22-____-000
)	
v.)	
)	
PJM Interconnection, L.L.C.)	
Independent Market Monitor for PJM)	
)	

**COMPLAINT REQUESTING FAST TRACK PROCESSING
OF WABASH VALLEY POWER ASSOCIATION, INC.**

Pursuant to Rule 206 of the Commission’s Rules and Regulations,¹ Wabash Valley Power Association, Inc. (“Wabash Valley”) files this Complaint Requesting Fast Track Processing seeking an order determining that the default Market Seller Offer Cap (“MSOC”)² for Wabash Valley’s ownership share of the Gibson 5³ Capacity Resource is the MSOC value established prior to October 1, 2021⁴ for the upcoming PJM Reliability Pricing Model (“RPM”) Base Residual Auction (“BRA”) for Delivery Year 2023/2024. Wabash Valley requests that the Commission reject or otherwise declare invalid the two revised default MSOCs for Wabash Valley’s ownership share of the Gibson 5 Capacity Resource that the Market Monitor published well after the October 1, 2021 deadline⁵ by

¹ 18 CFR § 385.206 (2018).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”).

³ Wabash Valley’s ownership share of Gibson 5 is 156 MW. Gibson 5 is physically located in the Midcontinent Independent System Operator (“MISO”) and Wabash Valley’s share is pseudo-tied to PJM.

⁴ See Confidential Exhibit B for MSOC values for Gibson 5.

⁵ This deadline was established by the Commission on October 25, 2021 in response to PJM’s requests for waiver of certain pre-auction deadlines. See 177 FERC ¶ 61,050.

which market sellers, including Wabash Valley, were required to decide whether to utilize the default MSOC or instead request a unit-specific MSOC. Wabash Valley's complaint is necessary because PJM failed to definitively set the Gibson 5 default MSOC at the pre-October 1 value when requested to do so by Wabash Valley. Further, given the condensed timelines and because resolution of this issue is necessary to determine Wabash Valley's Offer Cap values for its Gibson 5 Capacity Resource for purposes of the upcoming BRA scheduled for January 25, 2022, Wabash Valley requests fast-track processing of this complaint.

The Market Monitor's actions in revising the Gibson 5 default MSOC after the October 1, 2021 deadline were unjust, unreasonable, and unduly prejudicial to Wabash Valley because (1) Wabash Valley relied upon the default MSOC rate that was in effect prior to October 1, 2021 when deciding not to submit data and to request a unit-specific MSOC for Gibson 5 and; (2) the Market Monitor's late revisions substantially reduce the price that Wabash Valley can offer its ownership share of Gibson 5 into the upcoming 2023/2024 BRA.

I. BACKGROUND

Under the PJM OATT, the Market Monitor is required to provide to Capacity Market Sellers for each existing generation resource the net energy and ancillary services (E&AS") revenues, together with such resources' default gross Avoidable Cost Rate ("ACR") prior to the deadline for each Capacity Market Seller to make a determination whether to accept the default net ACR⁶ as the MSOC for the existing generation resource

⁶ Default gross ACR minus the unit-specific E&AS revenues

or submit data for and request a unit-specific net ACR⁷ from the Market Monitor and PJM. The Market Monitor posts such information to the PJM Member Information Reporting Application (“MIRA”). Under the PJM OATT, if a Capacity Market Seller does not request a unit-specific net ACR by the deadline established under the OATT, then the MSOC for such units are set at the default net ACR.⁸

For the 2023/2024 BRA, the Market Monitor posted the projected net E&AS revenues for each existing generation resource for the 2023/2024 BRA on June 28, 2021.⁹

On October 25, 2021, the Commission granted PJM’s requests for waivers¹⁰ to revise the pre-auction deadlines for the 2023/2024 BRA. The Commission’s order approved PJM’s request to extend the date for the BRA from December 1, 2021 to January 25, 2022 and extend several interim deadlines as follows:

- October 1, 2021 - Deadline for Capacity Market Sellers to request must-offer exceptions associated with resource deactivations and unit-specific offer caps. Also last day for Capacity Market Sellers to submit unit-specific offer cap data.
- October 31, 2021 – Deadline for Market Monitor to provide Capacity Market Sellers who have requested unit-specific offer caps the Market Monitor’s determination of their proposed unit-specific offer caps.

⁷ Unit-Specific gross ACR minus unit-specific E&AS revenues.

⁸ OATT Attachment DD, Section 6.7(c)(ii)

⁹ See Motion for Clarification, or in the Alternative, Motion for Waiver of the Independent Market Monitor for PJM, filed November 19, 2021 in Docket Nos. EL19-47-000, *et al.* at 4.

¹⁰ *PJM Interconnection, L.L.C.*, 177 FERC ¶ 61,050 (2021).

- November 5, 2021 – Deadline for Capacity Market Sellers who requested unit-specific offer caps to notify PJM and the Market Monitor whether they accept or reject the Market Monitor’s determination of their unit-specific offer caps.
- November 25, 2021 – Deadline for PJM to notify the Capacity Market Sellers who rejected the Market Monitor’s unit-specific offer cap determination PJM’s final unit-specific offer cap determination.

A Capacity Market Seller that disagrees with PJM’s determination of the final unit-specific offer cap can file a petition with the FERC seeking a determination of whether a MSOC complies with the requirements of the OATT.¹¹

II. COMPLAINT

The Market Monitor’s determination of the E&AS revenues and default ACR for each existing generation resource, including Wabash Valley’s share of Gibson Unit 5, for the 2023/2024 BRA was posted to MIRA prior to the October 1, 2021 deadline.¹²

Wabash Valley had until October 1, 2021 to request a unit-specific MSOC for Gibson 5 and to submit unit-specific offer cap data to the Market Monitor. Prior to October 1, 2021, Wabash Valley reviewed the default MSOC for Gibson Unit 5 and decided to accept the default MSOC and not request a unit-specific MSOC. Based on the OATT, by

¹¹ PJM OATT, Attach. DD 6.4(c). See also 176 FERC ¶ 61,137 para. 66-67 (“Should sellers dispute the ultimate determination by PJM, sellers may seek Commission action.”)(“Moreover, as provided in the Tariff, should a dispute arise between a seller and the Market Monitor, a seller may seek Commission action.”).

¹² See Confidential Exhibit A to this Complaint.

not requesting a unit-specific MSOC by October 1, 2021, the MSOC for Gibson 5 was automatically set at the default MSOC.

Notwithstanding that the MSOC for Gibson 5 was automatically set on October 1 at the default MSOC posted by the Market Monitor prior to October 1, 2021, the Market Monitor revised the E&AS revenues for Gibson 5 on October 23, 2021 and posted a revised default MSOC¹³ for Gibson 5 on October 29, 2021. The revised default MSOC for Gibson 5 posted on October 29, 2021 was 97.5% less than the default MSOC relied upon by Wabash Valley prior to the October 1, 2021 deadline.¹⁴

On November 12, 2021, the Market Monitor yet again revised the default MSOC for Gibson 5 to a default MSOC¹⁵ that is 66% less than the default MSOC relied upon by Wabash Valley prior to the October 1, 2021 deadline.

The Market Monitor's revisions to the Gibson 5 default MSOC after the October 1, 2021 deadline relied upon by Wabash Valley in not seeking a unit-specific MSOC is in contravention of the express provisions and the intent of the PJM OATT. As PJM has explained, these specific, "prescribed deadlines are necessary to ensure the orderly administration of pre-auction activities leading up to the Base Residual Auction."¹⁶ PJM has also explained that "[g]iven the October 1, 2021 deadline for Capacity Market Sellers to submit a unit-specific Market Seller Offer Cap, the default Market Seller Offer Cap necessarily should also be established and finalized prior to the Tariff deadline for

¹³ See Confidential Exhibit C.

¹⁴ See Confidential Exhibit B.

¹⁵ See Confidential Exhibit D.

¹⁶ See Answer of PJM Interconnection, L.L.C. filed in Docket Nos. EL19-47-000, *et al*, on November 23, 2021 at 5-6.

Capacity Market Sellers to submit a unit-specific Market Seller Offer Cap (*i.e.*, October 1, 2021).”¹⁷ In light of the fact that the Market Monitor’s two revisions after October 1, 2021 are beyond the prescribed deadlines, and Wabash Valley relied on the Gibson 5 default MSOC as provided prior to the October 1 deadline, PJM’s failures to correct these actions as Wabash Valley requested, by determining that the pre-October 1 Gibson 5 default MSOC would be the applicable calculation, is unjust and unreasonable, and unduly prejudicial to Wabash Valley and its rights under the PJM OATT to be able to decide whether to request a unit-specific MSOC for Gibson 5 or rely upon the default MSOC in effect at the time that Wabash Valley must make such an election. Wabash Valley notes that in addition to the fact that the Market Monitor’s post-October 1 revisions to the calculation of E&AS revenues and default MSOC should be rejected or deemed inapplicable because they were made late, PJM has said it does not share the Market Monitor’s view that its previously calculated Net E&AS offsets are inconsistent with the relevant OATT requirements.¹⁸ Thus, the Market Monitor’s late revisions are unjustified.

Nothing in the PJM OATT expressly allows the Market Monitor to change the default MSOC for existing resources after the deadline for requesting unit-specific MSOCs. Rather, the OATT only allows the Market Monitor after the default election deadline to evaluate a Capacity Market Seller’s request for a unit-specific MSOC, including such units’ unit-specific gross ACR and unit-specific E&AS revenues and

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 2.

determining whether the Capacity Market Seller's requested unit-specific MSOC is acceptable or whether to determine a different unit-specific MSOC. Wabash Valley followed that procedure and it is fundamentally unjust and unreasonable for the Market Monitor to be allowed to change the default MSOC, subsequent to market sellers making determinations based on the pre-October 1 default MSOC.

As PJM has explained, the period between the publication of the MSOC and October 1 was "to provide Capacity Market Sellers three weeks to determine whether to seek a unit-specific offer cap and, if so, to prepare the necessary supporting documentation in seeking a unit-specific offer cap."¹⁹ Wabash did not request a unit-specific MSOC and is therefore entitled under the OATT to use the default MSOC for Gibson 5 posted by the Market Monitor prior to October 1, 2021.

Moreover, if permitted, the Market Monitor's ability to change calculations at will, after the period within which Capacity Market Sellers must make significant business decisions regarding their resources, will generate uncertainty that will undermine the PJM capacity construct and auctions going forward. Such an outcome might also force Capacity Market Sellers to elect a unit-specific MSOC out of an abundance of caution, which would create inefficient and burdensome process for Capacity Market Sellers, PJM and even the Market Monitor as it would need to evaluate several more unit-specific MSOC requests.²⁰

¹⁹ PJM's filing in Docket No. ER21-2877-000, dated September 10, 2021 at page 2.

²⁰ See Answer of PJM Interconnection, L.L.C., filed in Docket Nos. EL19-47-000, *et al.* at 5 (PJM warned that if the pre-October 1 MSOC is not adhered to, "Capacity Market Sellers would effectively be forced to seek a unit-specific Markets Seller Offer Cap since no one could rely on a changing default Market Seller Offer Cap prior to the October 1, 2021 deadline.").

III. RULE 206 REQUIREMENTS

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

As discussed above, the Market Monitor's revisions to the E&AS revenues and default MSOC after the October 1, 2021 deadline were beyond the PJM OATT provisions, unjust, unreasonable and prejudicial to Wabash Valley. The Market Monitor impermissibly revised the E&AS revenues for Gibson 5 on October 23, 2021 and posted a revised default MSOC²¹ for Gibson 5 on October 29, 2021. The revised default MSOC for Gibson 5 posted on October 29, 2021 was 97.5% less than the default MSOC relied upon by Wabash Valley prior to the October 1, 2021 deadline.

On November 12, 2021, the Market Monitor again revised the default MSOC for Gibson 5 to a default MSOC²² that is 66% less than the default MSOC relied upon by Wabash Valley prior to the October 1, 2021 deadline.

The Market Monitor's revisions to the Gibson 5 default MSOC after the October 1, 2021 deadline relied upon by Wabash Valley in not seeking a unit-specific MSOC is in contravention of the express provisions and the intent of the PJM OATT. PJM's failure to correct these actions when requested to do so by Wabash Valley is in turn unjust and unreasonable.

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

The legal bases for this Complaint are as follows:

²¹ See Confidential Exhibit B to this Complaint.

²² Id.

1. Federal Power Act (“FPA”) section 205 requires that rates subject to the Commission’s jurisdiction must be just and reasonable and not unduly preferential or disadvantaged toward any person.²³ Any such rates that are not just and reasonable are unlawful.²⁴
2. Pursuant to FPA section 206, the Commission must remedy unjust and unreasonable rates.²⁵ As demonstrated in Sections I and II above, the Market Monitor’s revised calculations after October 1, 2021 and PJM’s failure to confirm that the pre-October 1 default MSOC would apply to Wabash Valley’s Gibson 5 Unit were unjust and unreasonable. Therefore, the Commission must remedy the imposition of an unjust and unreasonable default as the Market Monitor insists, and determine that the pre-October 1 default MSOC applies to Wabash Valley’s Gibson 1 Unit.
3. The PJM OATT is the filed rate and must be followed. Therefore, Wabash Valley submits that the Market Monitor’s revised calculations beyond the October 1 timeline prescribed by the OATT, as extended per order of the Commission, violate the filed rate and must be rejected on that basis. As evidence that even the Market Monitor recognizes that its post-October 1 revisions are impermissible under the OATT, the Market Monitor has

²³ 16 U.S.C. § 824d.

²⁴ *Id.*

²⁵ 16 U.S.C. § 824e.

requested a waiver of the OATT so that the late revisions to the E&AS revenues and default MSOCs can be forced upon Capacity Market Sellers.²⁶

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

The financial impact to Wabash Valley resulting from the Market Monitor's actions after October 1, 2021 and PJM's inaction in not correcting the Market Monitor's actions will not be determinable until after the 2023/2024 BRA and will depend on whether Wabash Valley's Gibson 5 clears the BRA and what is the BRA clearing price. However, for purposes of this Complaint, if Wabash Valley's Gibson 5 were the last incremental resource to clear the BRA and set the clearing price, Wabash Valley would be financially harmed as demonstrated in Confidential Exhibit E.

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

Wabash Valley and other Capacity Market Sellers will be fundamentally harmed if contrary to the OATT the Market Monitor is allowed at will to change EA&S Revenue calculations and default MSOC value for existing capacity resources, after the period within which Capacity Market Sellers must make significant business decisions regarding their resources and will generate uncertainty that will undermine the PJM capacity construct and BRAs going forward. As PJM explained, if the Market Monitor is permitted to make such late revisions to calculations relied upon by Capacity Market Sellers, then "Capacity Market Sellers would effectively be forced to seek a unit-specific

²⁶ See Motion for Clarification or in the Alternative, Motion for Waiver of the Independent Market Monitor for PJM, filed in Docket Nos. EL19-47-000, *et. al* on November 19, 2021 at 6-8.

Markets Seller Offer Cap since no one could rely on a changing default Market Seller Offer Cap prior to the October 1, 2021 deadline.”²⁷ Such an outcome would undermine the administration of the BRAs.

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

On November 18, 2021, the Market Monitor submitted a Motion for Clarification, or in the Alternative, Motion for Waiver in Docket Nos. EL19-47-000, EL19-63-000, ER21-2444-000 and ER21-2877-000. In its Motion, the Market Monitor sought clarification regarding its ability to “correct” MSOCs after the deadline for posting MSOCs²⁸ and sought a waiver of the applicable deadlines to allow the identified changes to the MSOC values and to allow market participants and PJM to meet their “tariff defined obligations.”²⁹

Wabash Valley filed a Response to the Market Monitor’s Motion on November 22, 2021, opposing the Market Monitor’s requested clarification because it is prejudicial to Wabash Valley and other market sellers and would allow the Market Monitor to change the default MSOC for Wabash Valley’s ownership share of Gibson 5 after the deadline for Wabash Valley to request a unit-specific MSOC (*i.e.*, October 1, 2021) and after Wabash Valley relied on the default MSOC when deciding not to request a unit-specific MSOC.³⁰ Wabash Valley opposed the Market Monitor’s request for waiver of the “applicable deadlines” because it would force the Market Monitor’s late revisions to the

²⁷ Answer of PJM Interconnection, L.L.C., filed in Docket Nos. EL19-47-000, *et al.* at 5,

²⁸ Market Monitor Motion at p. 1.

²⁹ Market Monitor Motion at p. 2.

³⁰ Wabash Valley Response at pp. 1-2.

MSOC values upon market sellers after they followed the OATT and relied upon the MSOCs posted by the Market Monitor in making its determination by the October 1, 2021 deadline. Wabash Valley also opposed the Market Monitor's request for waiver because it is retroactive in nature and must be rejected on that basis.³¹

PJM filed an Answer to the Market Monitor's Motion on November 23, 2021. The Market Monitor filed an Answer and Motion for Leave to Answer PJM's Answer on December 1, 2021. PJM filed a subsequent Answer on December 2, 2021. The Commission has not yet ruled on the Market Monitor's Motion, but established a Comment Date of December 9, 2021.

Wabash Valley 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

For the reasons discussed in this Complaint, Wabash Valley requests that the Commission determine and direct that the default MSOC for Wabash Valley's ownership share of the Gibson 5 Capacity Resource is the MSOC value established prior to October 1, 2021³² for the upcoming BRA for Delivery Year 2023/2024 unless Wabash Valley mutually agrees otherwise with the Market Monitor and/or PJM during the pendency of this proceeding.

Further, Wabash Valley requests that the Commission reject or otherwise declare invalid the two revised default MSOCs for Wabash Valley's ownership share of the

³¹ Wabash Valley Response at p. 6.

³² See Confidential Exhibits A and B.

Gibson 5 Capacity Resource that the Market Monitor published well after the October 1, 2021 deadline³³ by which market sellers, including Wabash Valley, were required to decide whether to utilize the default MSOC or instead request a unit-specific MSOC.

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

This pleading and its attachments support the complaint.

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

Wabash Valley has not contacted the Enforcement Hotline. Prior to submitting this Complaint, Wabash Valley had communications with the Market Monitor and PJM in an attempt to first understand the basis for the Market Monitor's impermissible revisions to the default MSOC, then to request the Market Monitor and/or PJM abide by the prescribed timelines and abide by the default MSOC for Wabash Valley's Gibson 5 Unit as provided prior to October 1, 2021. As demonstrated by the Market Monitor's request for waiver filed in Docket Nos. EL19-47-000, *et al.*, the Market Monitor's view is that it either can impose late revisions to the default MSOCs, or that the Commission should grant a waiver of the PJM OATT in order to permit the Market Monitor to do so. Given the Market Monitor and PJM's refusal to follow the prescribed deadlines by abiding by the October 1 deadline, the need to resolve this matter on an expedited basis, Wabash Valley does not believe that further informal dispute resolution efforts would be productive. Therefore, Wabash Valley seeks relief from the Commission at this time.

³³ This deadline was established by the Commission on October 25, 2021 in response to PJM's requests for waiver of certain pre-auction deadlines. See 177 FERC ¶ 61,050.

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

A form of notice suitable for publication in the Federal Register is included as Attachment 1 to this Complaint..

J. Rule 206(c): Service on Respondents

Wabash Valley certifies that copies of this Complaint were served by email on Respondents simultaneous with filing at the Commission, as well as by overnight mail.

IV. COMMUNICATIONS

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

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V. REQUEST FOR FAST TRACK PROCESSING

Wabash Valley respectfully requests fast track processing under Rule 206(b)(11) and (h) of the Commission's Rules of Practice and Procedure.³⁴ Fast track processing is necessary to address the unjust and unreasonable actions of the Market Monitor and PJM within the tight deadlines and schedule for the 2023/2024 PJM BRA that is scheduled to be held on January 25, 2022 and that Wabash Valley is not required to participate in the BRA utilizing a default MSOC for Gibson 5 that is lower than the value that was set by the October 1, 2021 deadline. Under the existing timeline for the BRA for Delivery Year

³⁴ 18 C.F.R. § 385.206(b)(11) and (h).

2023/2024, the deadline for Wabash Valley to determine whether to request a unit-specific MSOC based on the default MSOC provided by the Market Monitor was October 1, 2021. Based on the Market Monitor's motion and waiver request filed in Docket Nos. EL10-49-000, the Market Monitor seeks yet another change in the pre-auction deadlines, in advance of the BRA scheduled for January 25, 2022. Under the Commission's regulations, answers, interventions and comments on the Complaint will not be due until 20 days after the Complaint is filed,³⁵ then the Commission would need time to consider and issue its order on the merits of the Complaint. With the BRA scheduled for January 25, 2022, the uncertainty regarding which default MSOC will apply to Wabash Valley's Gibson 5 Unit leaves Wabash Valley in an untenable position with respect to the upcoming BRA.

Moreover, because the offer level for Wabash Valley's Capacity Resource could impact the clearing prices, and the clearing prices will apply to multiple resources in the BRA, Wabash Valley submits that the issue is not one that can be revised or remedied if the Commission issues an order on this Complaint after Wabash Valley submits its Sell Offer or, even worse, after the BRA has been conducted by PJM.

VI. REQUEST FOR CONFIDENTIAL TREATMENT

In accordance with Section 388.112 of the Commission's regulations, 18 C.F.R. § 388.112, Wabash Valley requests confidential treatment for Confidential Exhibits A, B, C, D and E attached to this Complaint. These exhibits contain non-public, proprietary information on Wabash Valley's MSOC for Gibson 5. In accordance with the

³⁵ 18 C.F.R. § 385.206(f).

Commission's regulations, Wabash Valley submits an unredacted version of these exhibits, which has been marked "CUI/PRIV – PROTECTED MATERIAL – DO NOT RELEASE", a redacted version with the confidential information removed, and a proposed form of protective order as Attachment 2.

VII. CONCLUSION

For the foregoing reasons, Wabash Valley respectfully requests that the Commission direct PJM and the Market Monitor to set the default MSOC for Gibson 5 for the 2023/2024 BRA to the value posted prior to October 1, 2021³⁶ and expeditiously grant the relief requested herein.

Respectfully submitted

By: /s/ Randolph G. Holt

Randolph G. Holt

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c/o Wabash Valley Power Association

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Dated: December 3, 2021

*Counsel for Wabash Valley Power
Association, Inc.*

³⁶ See Confidential Exhibit B.

PUBLIC VERSION

CONFIDENTIAL EXHIBIT A

PROTECTED MATERIAL REDACTED

PUBLIC VERSION

CONFIDENTIAL EXHIBIT B

<u>Date Posted</u>	Gibson 5 <u>Default MSOC Value</u>
Prior to October 1, 2021	
October 29, 2021	
November 12, 2021	

PUBLIC VERSION

CONFIDENTIAL EXHIBIT C

PROTECTED INFORMATION REDACTED

PUBLIC VERSION

CONFIDENTIAL EXHIBIT D

PROTECTED INFORMATION REDACTED

PUBLIC VERSION

CONFIDENTIAL EXHIBIT E

CALCULATION OF POTENTIAL FINANCIAL HARM

PROTECTED INFORMATION REDACTED

ATTACHMENT 1

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Wabash Valley Power Association, Inc.)	
)	
v.)	Docket No. EL22-____-000
)	
PJM Interconnection, L.L.C.)	
Independent Market Monitor for PJM)	
)	

NOTICE OF COMPLAINT REQUESTING FAST TRACK PROCESSING

(____, 2021)

Take notice that on December 3, 2021, pursuant to section 206 of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR § 385.206 (2011), Wabash Valley Power Association, Inc. (Complainant) filed a formal complaint requesting fast track processing against PJM Interconnection, L.L.C. and the Independent Market Monitor for PJM (individually and collectively, the Respondent) requesting that the Commission direct Respondent to revise the default MSOC for Complainant's ownership share of Gibson 5 for the 2023/2024 BRA to the default MSOC posted by the Respondent prior to October 1, 2021.

The Complainant states that copies of the complaint were served on representatives of the Respondent.

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 __, 2021.

Kimberly D. Bose,
Secretary

ATTACHMENT 2

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Wabash Valley Power Association, Inc.)	
)	Docket No. EL22-____-000
v.)	
)	
PJM Interconnection, L.L.C.)	
Independent Market Monitor for PJM)	
)	

PROTECTIVE ORDER

(Issued)

1. Participants in this proceeding(s) may exchange documents or materials that are deemed to contain Privileged Material and/or Critical Energy/Electric Infrastructure Information (CEII), as those terms are defined herein. Accordingly, IT IS ORDERED THAT this Protective Order shall govern the use of all such material produced by, or on behalf of, any Participant in the above-captioned proceeding(s).
2. The Commission's regulations¹ 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 Order provides that a Participant:
 - A. *may* designate as Privileged Material any material which customarily is treated by that Participant as commercially sensitive or proprietary or material subject to a legal privilege, which is not otherwise available to the public, and which, if disclosed, would subject that Participant 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 Order, the listed terms are defined as follows:

¹ Compare 18 C.F.R. § 388.112 with 18 C.F.R. § 388.113.

² Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff, 82 Fed. Reg. 18632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

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- A. Participant(s): As defined at 18 C.F.R. § 385.102(b).
- B. Privileged Material:³
- i. Material (including depositions) provided by a Participant in response to discovery requests or filed with the Commission, and that is designated as Privileged Material by such Participant;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 Participant;⁵
 - iii. Any information contained in or obtained from such designated material;
 - iv. Any other material which is made subject to this Protective Order by the Presiding Administrative Law Judge (Presiding Judge) or the Chief Administrative Law Judge (Chief Judge) in the absence of the Presiding Judge or where no presiding judge is designated, the Federal Energy Regulatory Commission (Commission), any court, or

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).

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other body having appropriate authority, or by agreement of the Participants (subject to approval by the relevant authority);

- 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
- 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 Order; or
 - c. Any information or document labeled as “Non-Internet Public” by a Participant, in accordance with Paragraph 30 of FERC Order No. 630.⁷
- viii. Additional Subcategories of Privileged Material in Oil Pipeline Proceedings:
 - a. Section 15(13) Privileged Material:⁸ Any materials, permitted to be produced by this Protective Order,

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

⁷ FERC Stat. & Reg. ¶ 31,140.

⁸ Section 15(13) of the Interstate Commerce Act, 49 U.S.C. § 15(13), prohibits disclosure of information pertaining to the business activities of oil pipeline shippers or consignees. Participants disclosing such information in accordance with the terms of this Protective Order will be deemed to not have contravened the prohibitions of this statutory provision.

concerning the nature, kind, quantity, destination or routing of any products tendered or delivered to a Participant for interstate transportation by or on behalf of a specific shipper, when the identity of the shipper is contained in or may be discerned from the material to be provided. This subcategory shall not apply if the shipper to whom such information pertains consents that the information be categorized as Privileged Material under the other provisions of this Protective Order or produced outside the scope of this Protective Order.

- b. Highly Confidential Privileged Material: A Participant may use this designation for those materials that are of such a commercially sensitive nature among the Participants or of such a private, personal nature that the producing Participant is able to justify a heightened level of confidential protection with respect to those materials.
- C. Critical Energy/Electric Infrastructure Information (CEII): As defined at 18 C.F.R. §§ 388.113(a), (c).
- D. Non-Disclosure Certificate: The certificate attached to this Protective Order, by which Participants 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 Order, and that such Participants have read the Protective Order and agree to be bound by it. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for this proceeding.
- E. Reviewing Representative:⁹ A person who has signed a Non-Disclosure Certificate and who is:
 - i. Commission Trial Staff designated as such in this proceeding;

⁹ For oil pipeline proceedings involving the additional subcategories of Privileged Material, there shall also be Section 15(13) Reviewing Representatives and Highly Confidential Reviewing Representatives subject to the corresponding terms of this definition.

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- ii. An attorney who has made an appearance in this proceeding for a Participant;
- 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 Participant;
- iv. An expert or an employee of an expert retained by a Participant 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 Presiding Judge, the Chief Judge, or the Commission; or
- vi. Employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.¹⁰

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

6. Privileged Material and/or CEII must be handled by each Participant and by each Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9 of this Protective Order. 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

¹⁰ In oil pipeline proceedings, individuals that have direct or supervisory responsibilities over the purchase, sale, marketing, or exchange of crude oil or petroleum products (including liquefied petroleum gases), are ineligible to qualify as a Reviewing Representative.

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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 Participant or competitor of any Participant 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. In the event that a Participant wishes to designate a person not described in Paragraph 3.E above as a Reviewing Representative, the Participant must seek agreement from the Participant providing the Privileged Material and/or CEII. If an agreement is reached, the designee shall be a Reviewing Representative pursuant to Paragraph 3.D of this Protective Order with respect to those materials. If no agreement is reached, the matter must be submitted to the Presiding Judge 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 Order until three business days after that Reviewing Representative first has executed and served a Non-Disclosure Certificate.¹¹¹¹ 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 Order, and must take all reasonable

¹¹ During this three-day period, a Participant may file an objection with the Presiding Judge or 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.

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precautions to ensure that Privileged Material and/or CEII are not disclosed to unauthorized persons. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for the proceeding.

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 Order, 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 Order and the Non-Disclosure Certificate for as long as the Protective Order is in effect.¹²

11. All Privileged Material and/or CEII in this proceeding filed with the Commission, submitted to the Presiding Judge, 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*.¹³ 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.¹⁴ 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.

¹² See *infra* P 21.

¹³ 82 Fed. Reg. 18632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

¹⁴ The parties in oil pipeline proceedings may desire additional protection in their handling of the following types of material as defined in this Protective Order: Section 15(13) Privileged Material; and Highly Confidential Privileged Material. Participants may incorporate these descriptive subcategories into their document labels as needed (e.g., CUI//PRIV-Section 15(13) or CUI//PRIV-HC).

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- 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 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. The Secretary shall place any Privileged Material and/or CEII filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination concerning any claim of privilege or CEII status. The Commission retains the right to make determinations with regard to any privilege or CEII claim, as well as the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff, the notification procedures specified at 18 C.F.R. § 388.112 must be followed before making public any Privileged Material.
13. If any Participant 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 Participant first must notify both counsel for the disclosing Participant and the Presiding Judge, and identify all such Privileged Material. Thereafter, use of such Privileged Material will be governed by procedures determined by the Presiding Judge.
14. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the production or use of Privileged Material and/or CEII on any appropriate ground.
15. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge (or the Chief Judge in the Presiding Judge’s absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority, to find this Protective Order should not apply to all or any materials previously designated Privileged Material pursuant to this Protective Order. The Presiding Judge (or the Chief Judge in the Presiding Judge’s absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

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16. Each Participant governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge (or the Chief Judge in the Presiding Judge's absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority.

17. Subject to Paragraph 18, the Presiding Judge (or the Chief Judge in the Presiding Judge's absence or where no presiding judge is designated), or the Commission shall resolve any disputes arising under this Protective Order pertaining to Privileged Material according to the following procedures. Prior to presenting any such dispute to the Presiding Judge, the Chief Judge or the Commission, the Participants to the dispute shall employ good faith best efforts to resolve it.

- A. Any Participant that contests the designation of material as Privileged Material shall notify the Participant 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 Participant seeking protection. If the Presiding Judge, the Chief Judge, or 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 Participant as CEII. Material so designated shall remain subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's CEII Coordinator that such material need not retain that designation.

18. The designator will have five (5) days in which to respond to any pleading requesting disclosure of Privileged Material. Should the Presiding Judge, the Chief Judge, or the Commission, as appropriate, determine that the information should be made public, the Presiding Judge, the Chief Judge, or 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 Order 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 Presiding Judge, the Chief Judge, or the Commission, as appropriate, 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 Participant waives its rights to seek additional

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administrative or judicial remedies after a Presiding Judge or Chief Judge 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.

19. Privileged Material and/or CEII shall remain available to Participants 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 Participant that produced the Privileged Material and/or CEII may request (in writing) that all other Participants 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 Order. If requested, each Participant also must submit to the Participant 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 Order.

20. Regardless of any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Judge, the Chief Judge, or 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).

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

Presiding Administrative Law Judge

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Wabash Valley Power Association, Inc.

Docket No. EL22-____-000

v.

PJM Interconnection, L.L.C.

Independent Market Monitor for PJM

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Privileged Material¹ and/or Critical Energy/Electric Infrastructure Information (CEII) is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, 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 Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____

¹ If applicable, for pipeline proceedings involving additional subcategories of Privileged Material, the signatory should indicate here whether this Non-Disclosure Certificate additionally governs access to:

☐ : Section 15(13) Privileged Material

☐ : Highly Confidential Privileged Material

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