

167 FERC ¶ 61,084
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick,

PJM Interconnection, L.L.C.

Docket Nos. ER16-372-003
ER16-372-004
ER16-372-005

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILINGS
AND DENYING MOTION FOR CLARIFICATION

(Issued April 29, 2019)

1. On March 6, 2017, PJM Interconnection, L.L.C. (PJM) submitted Tariff revisions (March 6 Filing)¹ in compliance with a Commission order issued under section 206 of the Federal Power Act on February 3, 2017.² Those Tariff revisions would allow market participants to submit day-ahead offers that vary by hour and to update their offers in real time (hourly offers). On July 31, 2017, PJM filed an amendment to the March 6 Filing (July 31 Amendment). For the reasons discussed below, we accept the March 6 Filing and July 31 Amendment. The penalty-related provisions filed in the March 6, 2017 filing are effective as of May 15, 2017. The remaining provisions filed in the March 6, 2017 filing, and the July 31, 2017 amendments are effective November 1, 2017. We also require PJM to make a further limited compliance filing within 30 days of the date of this order. Additionally, we deny PJM's motion for clarification as to the appropriateness of the Independent Market Monitor's (IMM) filing of certain complaints against PJM.

¹ The tariffs to which these revisions apply are PJM's Open Access Transmission Tariff (Tariff) and the Amended and Restated Operating Agreement (Operating Agreement). Appendix A lists the Tariff and Operating Agreement sections filed by PJM.

² *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133 (2017) (February 2017 Order).

I. Background

2. On August 16, 2016, PJM submitted a filing to comply with the Commission's June 2016 Order.³ In the June 2016 Order, the Commission found PJM's existing Tariff unjust and unreasonable because it does not allow market participants to submit hourly offers; rejected Tariff provisions PJM had initially proposed in this proceeding to allow for hourly offers; and directed a further compliance filing.⁴ In its compliance filing, PJM proposed to revise certain elements of its market rules to detail a Fuel Cost Policy review and approval process,⁵ and to provide Market Sellers greater flexibility to submit offers throughout the Operating Day. On February 3, 2017, the Commission accepted the August 16, 2016 compliance filing, but ordered PJM to make certain changes through a further compliance filing.

3. In the February 2017 Order, the Commission directed PJM to: (1) incorporate into Schedule 2(f), the standard of review regarding the Fuel Cost Policy and explain how a Market Seller would be found to be non-compliant with this standard;⁶ (2) clearly specify when a penalty for non-compliance with a Fuel Cost Policy would be terminated by PJM;⁷ (3) delineate, in Schedule 2(e), a timeline with specific milestones during the 45-day review period to provide more transparency on requirements and deadlines; (4) allow a new resource a 90-day time period before it submits its actual Fuel Cost Policy;⁸ (5) revise the provision relating to verification of emission allowances (subsection (j)(iii)) to specify when such allowances should be reviewed;⁹ (6) revise Schedule 2(a) of the Operating Agreement to add the words "consistent with its fuel

³ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,282 (2016) (June 2016 Order).

⁴ *Id.* PP 32-33.

⁵ Before a Market Seller can submit a cost-based offer, it must submit a Fuel Cost Policy to PJM that sets forth the methodology the seller would use to calculate cost-based energy offers. Schedule 2 of the Operating Agreement; PJM Manual 15 § 2.3.

⁶ February 2017 Order, 158 FERC ¶ 61,133 at P 51.

⁷ *Id.*

⁸ *Id.* P 52.

⁹ *Id.* P 54.

type” for greater clarity;¹⁰ (7) revise Schedule 2(l);¹¹ (8) remove the proposed Tariff revisions that would refer disputes between PJM and the IMM relating to PJM’s approval of a generator’s Fuel Cost Policy to the Commission’s Office of Enforcement;¹² (9) remove the \$5/MWh threshold provision entirely from its Tariff and Operating Agreement and require that Market Sellers update their cost-based offers whenever they update their market-based offers;¹³ (10) revise the definition of Incremental Energy Offer to refer only to “offers” and exclude the word “bids” to avoid any misinterpretation, and add the statement that offers “must be a non-decreasing function” in the definition in order to provide greater clarity on a key characteristic of incremental offers;¹⁴ (11) specify that a Market Seller may only update its Minimum Run Time for the uncommitted hours in real-time and that a Market Seller’s make-whole payment be based on the Minimum Run Time specified at the time of commitment;¹⁵ and (12) correct typographical errors and submit revisions to sections 1.10.9A and 6.4.1 (a) of Schedule 1 of the Operating Agreement.¹⁶

4. The Commission also directed PJM to reorganize Schedule 2 of the Operating Agreement to ensure that the Tariff is clear as to which provisions apply to the Fuel Cost Policy.¹⁷ Specifically, PJM was directed to reorganize Schedule 2 as follows: “Section I General Cost Provisions” will include current subsections (a), as revised above, through

¹⁰ *Id.* P 56.

¹¹ The revision to Schedule 2(l) intends to: (a) allocate the penalty charges based on the share of Load Serving Entities’ megawatt-hours (MWh) reflected in the penalty hours; (b) clarify what conditions need to be in place before PJM expects to terminate a penalty for a Market Seller that was found to be non-compliant; (c) specify a rebuttal period to allow for a Market Seller to respond to PJM’s revocation of its Fuel Cost Policy; and (d) make the Market Seller, that is found to not be in violation of its Fuel Cost Policy during the rebuttal time period, whole by providing it with an uplift payment. *Id.* PP 80-81.

¹² *Id.* P 86.

¹³ *Id.* P 94.

¹⁴ *Id.* P 110.

¹⁵ *Id.* P 112.

¹⁶ *Id.* P 121.

¹⁷ *Id.* P 55.

(c), “Section II Fuel Cost Policy” will include proposed subsections (d) through (k) and (m), “Section III. Emission Allowances/Adder” will include proposed subsection (j)(iii); “Section IV Variable Operation and Maintenance Adders” will include proposed subsection (j)(iv); and “Section V Penalty Provisions” will include proposed subsection (l).¹⁸ The Commission also required PJM to list in Schedule 2, under the heading “For all generating units,” the following additional components included in fuel cost: incremental fuel cost, incremental maintenance cost, no load-cost during period of operation, incremental labor cost, emissions allowances/adders, variable operation and maintenance adders, ten percent adder, and other incremental operating costs.¹⁹

II. PJM’s Compliance and Amendment Filings

5. PJM states that its March 6 Filing responds to each of the compliance directives summarized above and requests that its proposed revisions related to the Fuel Cost Policy and the penalty structure be made effective May 15, 2017.

6. PJM states that its July 31 Amendment accurately describes: (1) how PJM intends to implement hourly offers, and (2) the calculation of its proposed penalty for Market Sellers that do not follow the applicable provisions of Schedule 2 of the Operating Agreement.²⁰ With respect to the first revision, PJM proposes language specifying that Market Sellers may update certain offer parameters that are part of their Real-time Offers during and through the end of the applicable clock hour. PJM states that the current language of Schedule 1 could be read as limiting Market Sellers’ ability to update the applicable parameters through the end of a clock hour, which was never PJM’s intention. With respect to the second revision, details of the penalty calculation are provided below.

7. On September 29, 2017, PJM submitted a supplemental filing informing the Commission that it intended to implement the hourly offers proposal on November 1, 2017.

III. PJM Request for Clarification of the February 2017 Order

8. Separately, on March 6, 2017, PJM filed a motion requesting clarification regarding the Commission’s statement in the February 2017 Order that disputes between PJM and its IMM over Fuel Cost Policies “are the province of the Commission and its Administrative Law Judges to address *in response to a complaint when appropriate*, or

¹⁸ *Id.*

¹⁹ *Id.* P 53.

²⁰ July 31 Amendment at 1.

for its Administrative Dispute Resolution process to resolve outside of formal processes.”²¹ PJM asks the Commission to clarify that it did not intend to enable the IMM to initiate a complaint against PJM when (a) the IMM disagrees with PJM’s acceptance of a seller’s Fuel Cost Policy, (b) PJM accepts an offer that the IMM believes is inconsistent with a seller’s Fuel Cost Policy, or (c) the IMM disagrees with PJM with respect to whether a penalty should be applied to a Market Seller’s cost-based offer.²² PJM asserts that permitting the IMM to file a complaint would be inconsistent with Commission Order No. 719,²³ the Commission’s regulations at 18 C.F.R. § 35.28(g)(iv) and (v),²⁴ and related implementing portions of PJM’s tariff, and would call into question whether the IMM would be truly impartial in the performance of its other functions.

IV. Notices of Filings and Responsive Pleadings

9. Notice of PJM’s March 6 Filing, Docket No. ER16-372-003, was published in the *Federal Register*, 82 Fed. Reg. 13,805 (2017), with interventions and protests due on or before March 27, 2017. Notice of PJM’s July 31 Amendment was published in the *Federal Register*, 82 Fed. Reg. 36,390 (2017), with interventions and protests due on or

²¹ PJM Request for Clarification at 2 (citing February 2016 Order, 158 FERC ¶ 61,133 at P 86) (emphasis added).

²² *Id.* at 2-3.

²³ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071 (2008), *order on reh’g*, Order No. 719-A, 128 FERC ¶ 61,059 (2009), *order on reh’g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

²⁴ PJM is presumably referring to 18 C.F.R. § 35.28(g)(3)(iv) and (v), which state in pertinent part:

(iv) (A) A Market Monitoring Unit is to make a non-public referral to the Commission in all instances where the Market Monitoring Unit has reason to believe that a Market Violation has occurred. . . .

. . . .

(v) (A) A Market Monitoring Unit is to make a referral to the Commission in all instances where the Market Monitoring Unit has reason to believe market design flaws exist that it believes could effectively be remedied by rule or tariff changes. . . .

before August 21, 2017. Public Citizen, Inc. filed a timely motion to intervene. Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM, filed comments (IMM First Comments). Comments were filed by the New Jersey Board of Public Utilities (New Jersey Board). Answers were submitted by the Joint State Commissions on March 31, 2017;²⁵ and by PJM on April 11, 2017 (PJM First Answer).

10. In response to PJM's July 31, 2017 Amendment, Docket No. ER16-372-005, the IMM filed additional comments on August 11, 2017 (IMM Second Comments). On August 28, 2017, American Municipal Power, Inc. (AMP) filed an answer to the IMM's Second Comments. On August 31, 2017, the PJM Power Providers Group (P3) filed an answer which it designated as reply comments.

11. In response to PJM's request for clarification of the February 2017 Order, in Docket No. ER16-372-004, the IMM filed an answer opposing PJM's request on March 10, 2017 (IMM First Answer), PJM and the IMM filed subsequent answers (PJM Second Answer, filed on April 13, 2017, and IMM Second Answer, filed on April 26, 2017, respectively), and other parties additionally filed answers.²⁶

V. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional

²⁵ The Joint State Commissions include: Pennsylvania Public Utility Commission, New Jersey Board, and Delaware Public Service Commission.

²⁶ Answer of Joint State Commissions (the Pennsylvania Public Utility Commission, the New Jersey Board of Public Utilities, and the Delaware Public Service Commission), filed March 31, 2017; answer of Ohio Consumers Counsel, filed May 8, 2017; answer of the Organization of PJM States (OPSI), filed May 9, 2017; and Joint Consumer Advocates (Delaware Division of the Public Advocate; New Jersey Division of Rate Counsel; Illinois Citizens Utility Board; Pennsylvania Office of Consumer Advocate; Maryland Office of People's Counsel; Virginia Office of the Attorney General, Division of Consumer Counsel; Kentucky Office of the Attorney General, Office of Rate Intervention; District of Columbia Office of the People's Counsel; and the West Virginia Consumer Advocate Division), filed May 12, 2017.

authority. We will accept the parties' answers because they have provided information that has assisted us in our decision-making process.

B. Substantive Matters

14. As discussed below, we accept PJM's proposed revisions to the Fuel Cost Policy and the penalty structure, subject to conditions, to become effective as follows: the penalty provisions in the March 6, 2017 filing become effective May 15, 2017; all other provisions in the March 6, 2017 filing become effective November 1, 2017; and the amendments in the July 31 Amendment filing become effective November 1, 2017. The issues relating to the standard of review of a Market Seller's Fuel Cost Policy, timeline with milestones for processing the Fuel Cost Policy, emissions and variable operating and maintenance adders, the definition of Flexible Resources, and the listing of the 10 percent adder requirement in Schedule 2 of the Operating Agreement were protested and are addressed in detail below. Other than those provisions, we find PJM has complied with the Commission's February 2017 Order. In addition, we deny PJM's motion for clarification, as discussed below.

C. Standard of Review for Fuel Cost Policy

1. February 2017 Order

15. In the February 2017 Order, the Commission accepted PJM's filing on the condition that PJM incorporate into Schedule 2(f) of the Operating Agreement, the standard of review related to Fuel Cost Policy and explain how a Market Seller would be found to be non-compliant with this standard. The Commission also directed PJM to clearly specify when a penalty for non-compliance with a Fuel Cost Policy would be terminated by PJM.²⁷

2. March 6 Filing

16. PJM revises the standard of review provision to clarify that PJM will approve a submitted Fuel Cost Policy if it meets all the requirements set forth in Operating Agreement, Schedule 2, section 2.3(a)(i) through (v).²⁸ PJM explains that the standard of

²⁷ February 2017 Order, 158 FERC ¶ 61,133 at P 51.

²⁸ March 6 Filing at 3. Consistent with the Commission's directives in the February 2017 Order and other Operating Agreement schedules, PJM proposes to renumber the various subsections of Schedule 2 of the Operating Agreement. For example, the standard of review section, which was initially proposed as new subsection

review provides detailed guidance as to the type and scope of information that a Market Seller must include in its Fuel Cost Policy for PJM's approval. For example, PJM proposes to include language to provide that a Fuel Cost Policy may also reflect the Market Seller's "method of calculating delivered fossil fuel cost, limited to inventoried cost, replacement cost or a combination thereof, that reflect the way fuel is purchased or scheduled for purchase."²⁹

17. PJM notes that failure to meet these standards or failing to "accurately reflect the applicable costs, such as the fuel source, transportation cost, procurement process used, applicable adders, commodity cost, or provide sufficient information for PJM to verify the Market Seller's fuel cost at the time of the Market Seller's cost-based offer" will result in PJM rejecting the Market Seller's Fuel Cost Policy.³⁰ With respect to when a penalty for non-compliance would be terminated, PJM states that it will assess penalties until the day after it approves the Market Seller's submitted Fuel Cost Policy and such penalties will be assessed for no less than one (1) Operating Day.³¹

3. Comments

18. The IMM argues that PJM's proposed standard of review does not include a requirement that Fuel Cost Policies be systematic. The IMM contends that PJM's standard of review makes no mention of "a standard method or methods for calculating fuel costs including objective triggers for each method" in support of verifiability of costs embedded in Fuel Cost Policies.³² The IMM states that PJM made public statements to Market Sellers that Fuel Cost Policies should be "verifiable and systematic" meaning "a series of steps that are followed to get to the creation of the cost-based offer," where "these steps should have thresholds and triggers associated with them; the steps should be able to be followed logically; explanations for liquid and poor liquidity markets should be defined;" and "an auditor should be able to follow the steps and arrive at the cost-based

(f) has been re-designated as section 2.3(a).

²⁹ March 6 Filing at 4; proposed section 2.3(a)(ii), Schedule 2, of the Operating Agreement.

³⁰ March 6 Filing at 4; proposed section 2.3(a), Schedule 2, of the Operating Agreement.

³¹ March 6 Filing at 12; proposed sections 5.1(b) and 5.1(c), Schedule 2, of the Operating Agreement.

³² IMM First Comments at 5 (citing February 2017 Order, 158 FERC ¶ 61,133 at P 57).

offer.”³³ The IMM requests that PJM be required to add these additional details in its proposed standard review, consistent with PJM’s public statements.³⁴

19. The IMM states that PJM’s proposed addition to Schedule 2.3(a)(ii), which reflects the Market Seller’s method of calculating delivered or purchased fuels, is unnecessary for market participants that select the market value option for calculating fuel cost that accurately reflects the market value of the fuel. The IMM explains that only the current market value of fuel cost is relevant for market participants because most of PJM’s natural gas fired generation is priced using the market value option. The IMM argues that PJM’s proposed standard with respect to fuel procurement would invalidate a large portion of the currently effective Fuel Cost Policies that are otherwise compliant with this section.³⁵

4. Commission Determination

20. We accept PJM’s proposed standard of review related to the Fuel Cost Policy with modifications proposed by PJM and direct PJM to include those provisions in its subsequent compliance filing. PJM states that its proposed standard of review complies with the Commission’s directives in the February 2017 Order. PJM explains that the standard of review, among other things, provides sufficient information about a Market Seller’s fuel procurement practices and describes how Market Sellers used those practices to compute their cost-based offers. The standard of review also reflects a Market Seller’s applicable commodity and/or transportation contracts including a Market Seller’s method of calculating and purchasing fuel.³⁶ As described above, a Market Seller that fails to meet the standard of review set forth in sections 2.3(a)(i) through 2.3(a)(v) of Schedule 2 of the Operating Agreement, or whose cost-based offer fails to comply with the appropriate Fuel Cost Policy, will be subject to a penalty.

21. We reject the IMM’s request to require PJM to include its public statements regarding Market Sellers’ Fuel Cost Policies, described above, in the proposed standard

³³ *Id.* at 5-6 (citing “Fuel Cost Policies and Hourly Offers Filing,” PJM presentation to the Markets Implementation Committee (March 8, 2017), which can be accessed at: <http://pjm.com/~media/committees-groups/committees/mic/20170308/20170308-item-07a1-fcp-update.ashx>).

³⁴ *Id.* at 6.

³⁵ *Id.* at 6-7.

³⁶ PJM’s standard of review, proposed section 2.3, Schedule 2, of the Operating Agreement.

of review as beyond the scope of PJM's compliance obligations in this proceeding. In the February 2017 Order, the Commission already found that PJM's proposal requires that Fuel Cost Policies be verifiable and systematic, that is, "they must 'document a standardized method or methods for calculating fuel costs including objective triggers for each method.'"³⁷

22. The IMM argues that because only the current market value of fuel cost is relevant in the calculation of fuel cost, PJM's proposed addition to Schedule 2.3(a)(ii), which reflects the Market Seller's method of calculating the cost of delivered or purchased fuels, is unnecessary.³⁸ We disagree with the IMM that PJM's proposed addition to Schedule 2.3(a)(ii) is unnecessary or that it will invalidate other portions of the Fuel Cost Policy. If market participants elect to use the market value option, then that choice supersedes any other provision in this section. We find that this provision is still relevant for those Market Sellers that do not choose the market value option and that removing the provision would create a gap in the tariff to address a requirement for market participants to explain a method of calculating fuel procurement costs.³⁹

D. Penalty Structure

1. July 31 Amendment

23. PJM states that its July 31 Amendment clarifies how the penalty related to a Market Seller's violation of their PJM-approved Fuel Cost Policies is calculated.⁴⁰ PJM explains that it recently realized that the penalty calculation does not precisely describe that the penalty will be applicable on a prospective basis after a Market Seller is notified, but in any event will always be applicable for a minimum of one day.⁴¹ To make this

³⁷ February 2017 Order, 158 FERC ¶ 61,133 at P 57.

³⁸ IMM First Comments at 7.

³⁹ Proposed section 2.3(a)(ii), Standard of Review, of Schedule 2, provides that a Fuel Cost Policy must "[r]eflects the Market Seller's applicable commodity and/or transportation contracts (to the extent it holds such contracts) and, the Market Seller's method of calculating delivered fossil fuel cost, limited to inventoried cost, replacement cost or a combination thereof, that reflect the way fuel is purchased or scheduled for purchase, and sets forth all applicable indices as a measure that PJM can use to verify how anticipated spot market purchases are utilized in determining fuel costs."

⁴⁰ July 31 Amendment at 5.

⁴¹ *Id.* at 7.

intention explicit, PJM proposes revisions to the definitions for the variables h and d in the Fuel Cost Policy penalty calculation. The penalty is calculated as follows:

$$\sum \text{Penalty}_{dh} = \frac{\min(d, 15)}{20} \times \text{LMP}_h \times \text{MW}_h$$

Where:

d is the greater of one and the number of days since PJM first notified the Market Seller of PJM's and the IMM's agreement regarding the applicability of a penalty. If PJM notifies the Market Seller of its non-compliant cost-based offer after the Market Seller has ceased submitting non-compliant cost-based offers, d shall be equal to one (1).

h is the applicable hour of the day for which the offers applies, commencing on the Operating Day that the Market Seller receives notice of its non-compliant cost-based offer. If PJM notifies the Market Seller of its non-compliant cost-based offer after the Market Seller has ceased submitting non-compliant cost-based offers, h is the applicable hours of the last Operating Day for which a non-compliant cost-based offer was submitted.

LMP_h is the real-time locational marginal price (LMP) at the applicable pricing location for the resources for the hour.

MW_h is the available capacity of the resources for the hour.⁴²

2. Comments

24. With respect to the application of the non-compliance penalty, the IMM states that the language in PJM's proposed section 5.1 of Schedule 2, in PJM's March 6 Filing, excludes the IMM from the determination of penalties with respect to other cost-based offer inputs because the penalty applies when PJM determines that any portion of the cost-based offer is non-compliant with Schedule 2. As such, the IMM argues that PJM's proposed revision is inconsistent with the scope of the June 2016 Order.⁴³

⁴² *Id.*

⁴³ IMM First Comments at 8-9 (citing June 2016 Order, 155 FERC ¶ 61,282 at P 63 ("The Commission required 'a penalty structure that will be applicable in the event that PJM or the IMM determines that a resource has submitted a cost-based offer that does not comply with Schedule 2 of the Operating Agreement or the Cost Development Guidelines in Manual 15'")).

25. Separately, in its comments on PJM's July 31 Amendment, the IMM also argues that the proposed penalty structure revisions are outside the scope of compliance with the Commission's February 2017 Order, and that the proposed changes significantly weaken the incentive for Market Sellers to submit accurate cost-based offers.⁴⁴ The IMM argues that the July 31 Amendment does not provide clarification, but rather, proposes substantive changes to the penalty applicability.⁴⁵ The IMM argues that the approved penalty language requires penalties for all identified inaccurate cost-based offers for every day on which they were submitted.⁴⁶ Thus, the IMM suggests that nearly every case of an inaccurate cost-based offer would require a referral to the Commission. The IMM states that the large volume of referrals would be ineffective in achieving the desired result, which is to provide an incentive for Market Sellers to submit accurate offers.⁴⁷ The IMM states that failure to penalize Market Sellers for non-compliant cost-based offers for any days prior to the notification gives Market Sellers an incentive to strategically delay responses to the IMM's inquiries to validate costs. The IMM also argues that the July 31 Amendment would lower the level of currently applicable penalties.⁴⁸

26. As a procedural matter, the IMM also argues that PJM incorrectly describes the July 31 Amendment as a compliance filing even though the Commission has not required or requested this filing, and that PJM is improperly seeking in this filing to lower the level of penalties.⁴⁹ The IMM argues that the issue concerning how to calculate penalties is closed in this docket and if PJM wants to change these provisions, it must file pursuant

⁴⁴ IMM Second Comments at 1.

⁴⁵ *Id.* at 4.

⁴⁶ *Id.* at 5.

⁴⁷ *Id.* at 5-6.

⁴⁸ *Id.* at 7. The IMM states that, since the penalty provisions became effective on May 15, 2017, it has calculated \$771,202 in total applicable penalties and that PJM's proposed changes to the current penalty calculation would instead result in total penalties of \$66,591. *Id.* at 1.

⁴⁹ *Id.* at 7-8.

to section 205 of the FPA. Similarly, the IMM argues that the Offer Parameter Flexibility Rules are not within the scope of compliance and should also be rejected.⁵⁰

3. Answers

27. PJM agrees with the IMM's concerns that Schedule 2 of the Operating Agreement should be revised to more clearly describe the IMM's role in imposing non-compliance penalties. Further, to conform with section 5.1(d), Schedule 2, of the Operating Agreement, and other parallel language in the Operating Agreement, PJM proposes the following additional revisions as part of a future compliance filing:

If upon review of a Market Seller's cost-based offer PJM and the Market Monitoring Unit disagree about whether the offer is in compliance with the Market Seller's PJM-approved Fuel Cost Policy, or disagree over whether any portion of the cost-based offer is not in compliance with this Schedule 2, PJM and/or the Market Monitoring Unit may confidentially refer the matter to FERC Office of Enforcement for resolution and determination whether the applicable penalties should be assessed.⁵¹

28. The New Jersey Board agrees with the IMM that the July 31 Amendment proposes substantives changes from what was previously accepted by the Commission and, accordingly, requests that the Commission reject the proposal. The New Jersey Board argues that calculating penalties to include days prior to PJM's notification of a violation is necessary to provide incentives for accurate cost-based offers, which prevent the exercise of market power. Moreover, the New Jersey Board argues that the PJM's amendment would be unfair to Market Sellers that ensured their offers complied with the market rules.⁵²

29. AMP supports PJM's July 31 Amendment. With respect to the IMM's position on the Fuel Cost Policy penalty calculation, AMP argues that no valid purpose is served by penalizing a Market Seller for an unwitting violation of its own Fuel Cost Policies, or when the violation has no impact on the market.⁵³ AMP states that limiting the penalty to the period after the Market Seller is notified of the violation provides an appropriate

⁵⁰ *Id.* at 9.

⁵¹ PJM First Answer at 2 (emphasis in original).

⁵² New Jersey Board Comments at 2.

⁵³ AMP Answer at 3.

incentive for Market Sellers to correct their errors promptly following notification. AMP agrees with PJM that for the period prior to notification, the Commission's penalty authority can be invoked if the Market Seller's actions were deliberate and purposeful.

30. P3 also supports the July 31 Amendment, finding that the proposed revisions will ensure transparency and flexibility for Market Sellers that submit offers throughout the Operating Day. With respect to the revisions regarding the Fuel Cost Policy penalty calculation, P3 states that the Amendment does not affect the core attributes of PJM's originally proposed penalty structure that the Commission approved in its February 2017 Order. P3 believes that the IMM's preferred application of the penalty calculation is overbroad and may not reflect the appropriate harm of the specific, alleged violation. Lastly, P3 finds that the IMM's proposal to apply penalties retroactively would be a violation of prior Commission precedent regarding the prospective application of rates, as well as of settled case law on the importance of notice of regulatory actions.⁵⁴

4. Commission Determination

31. We reject the IMM's and the New Jersey Board's arguments that the non-compliance penalties should apply for each day on which an inaccurate cost-based offer has been identified. We also reject the argument that failing to penalize Market Sellers for those days would incent Market Sellers to submit inaccurate offers. The Commission previously found in the February 2017 Order that PJM's proposed penalty structure is appropriate because, as PJM explained, "it is designed to grow in proportion with the possible impact that a Market Seller's cost-based offer may have on the market (i.e., the proposed penalty is based on the product of LMP and MW). Also, the proposed penalty is cumulative for each hour of each Operating Day that a Market Seller submits a non-compliant cost-based offer."⁵⁵ The Commission noted that PJM's proposed penalty structure was based on the penalty formulation developed by the IMM during the stakeholder process and that the penalty structure should dissuade a Market Seller from submitting a cost-based offer that is inconsistent with its Fuel Cost Policy.⁵⁶ The IMM did not request rehearing of that finding in the February 2017 Order, and we will not revisit that issue now in the context of a compliance order. We find that PJM's proposed penalty for a Market Seller without an approved Fuel Cost Policy will be assessed for no less than one (1) Operating Day.⁵⁷ As PJM clarifies in the July 31 Amendment, it will

⁵⁴ P3 Comments at 7.

⁵⁵ February 2017 Order, 158 FERC ¶ 61,133 at P 78.

⁵⁶ *Id.*

⁵⁷ PJM's proposed section 5.1(c), Schedule 2, of the Operating Agreement.

apply the penalty on a prospective basis after a Market Seller is notified, for a minimum of one day. Subsequent to PJM's notification, PJM's proposed penalty for a Market Seller not having an approved Fuel Cost Policy or submitting a cost-based offer that is non-compliant will not be imposed until the day after PJM determines that the Market Seller's cost-based offer complies with the approved Fuel Cost Policy of Schedule 2 of the Operating Agreement.⁵⁸ Nothing in the July 31 Amendment changed PJM's original proposal, approved by the Commission, to have non-compliance penalties begin on the day of notification.⁵⁹

32. Further, in an answer filed in an earlier phase of this proceeding, PJM argued that the retroactive application of noncompliance penalties as proposed by the IMM would be unjust and unreasonable because Market Sellers would not be provided adequate notice of their infraction and that a minor error made in calculating cost-based offers that a Market Seller had been submitting for a long period of time would automatically penalize them, even if the infraction did not have any market impact.⁶⁰ PJM believed that the IMM's approach was unduly punitive. Under PJM's proposal, PJM would begin applying the penalty the day after the Market Seller was placed on notice of the infraction by PJM or the IMM and the Market Seller would still be disciplined for its past violation through a referral and/or self-report to the Commission's Office of Enforcement.⁶¹ We agree with PJM and find it appropriate that the penalty be applied after a Market Seller has received notification of an infraction, since the purpose of the penalty structure is to incentivize compliance for accurate cost-based offers and Fuel Cost Policies, and not to retroactively penalize a Market Seller. We also agree with PJM that referral to the Commission's Office of Enforcement would address any impacts prior to the notification by PJM and therefore reject the IMM's protest that the penalty should apply retroactively.

33. Finally, the IMM argues that PJM's proposed section 5.1 of Schedule 2 excludes the IMM from the determination of penalties with respect to other cost-based offer inputs. PJM agrees with the IMM's concerns about the need for greater clarity on the IMM's role in the determination of penalties, and states that the revisions should be incorporated in Schedule 2 of the Operating Agreement. PJM proposes additional language to section 5.1(d) of Schedule 2 of the Operating Agreement to address this concern by adding "or disagree over whether any portion of the cost-based offer is not in compliance with this

⁵⁸ PJM's proposed section 5.1(b), Schedule 2, of the Operating Agreement.

⁵⁹ February 2017 Order, 158 FERC ¶ 61,133 at P 71.

⁶⁰ PJM's Answer Docket No. ER16-372-002 at 32-33 (October 7, 2016).

⁶¹ *Id.*

Schedule 2” on compliance. We direct PJM to make these revisions to section 5.1 of Schedule 2 in a compliance filing, within 30 days of the date of this order.⁶²

34. The IMM argues that PJM erred procedurally in making the July 31, 2017 filing as an amendment to its compliance filing, rather than through a new section 205 filing. We see no reason to reject the filing based on these grounds as we find that the filing was within the scope of our directives on compliance and that, as discussed above, the provisions are just and reasonable.⁶³

E. Timeline Milestones for Processing Fuel Cost Policies

1. February 2017 Order

35. The February 2017 Order required PJM to delineate, in Schedule 2(e), a timeline with specific milestones during the 45-day review period to provide more transparency on requirements and deadlines.⁶⁴ The February 2017 Order also required that a new resource should be granted a 90-day time period before it submits its actual Fuel Cost Policy, since it may not have operational data available before it starts commercial operations.⁶⁵

2. March 6 Filing

36. PJM explains that it revised Operating Agreement, section 2.2, Schedule 2(e), which is now re-designated as Operating Agreement, Schedule 2, to include a timeline, with milestones, detailing how PJM and the IMM will process submitted Fuel Cost Policies.⁶⁶ PJM states that proposed new section 2.2(b) incorporates and expands on the existing review process description from PJM Manual 15, section 2.3.1., to ensure that PJM and the IMM will have an initial period of 30 business days to review a submitted

⁶² Given the required changes in *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,030, at P 67 (2019), section 5.1 of Schedule 2 should now be section 6.1.

⁶³ These provisions, which were filed on July 31, 2017, are effective November 1, 2017. We note that if the filing instead had been made pursuant to section 205, the resulting effective date could still be November 1, 2017.

⁶⁴ February 2017 Order, 158 FERC ¶ 61,133 at P 52.

⁶⁵ *Id.*

⁶⁶ March 6 Filing at 5.

Fuel Cost Policy.⁶⁷ A Market Seller will have 5 business days to respond to a request for additional information by either PJM or the IMM, unless an alternative deadline is agreed to by the parties.⁶⁸

37. PJM is also revising section 2.2(a) to provide a longer time period for review and approval of new generation resources. Specifically, PJM provides forty-five days before a Market Seller expects to submit an initial cost-based offer for such a new generation resource. A Market Seller must submit to PJM and the IMM a “provisional” Fuel Cost Policy that “describes the Market Seller’s methodology to procure and price fuel and includes all available operating data.”⁶⁹ PJM also explains that within 90 days after the commercial operation date of the generation resource, the Market Seller must submit to PJM and the IMM an “updated” Fuel Cost Policy that reflects “actual commercial operating data.”⁷⁰

3. IMM Comments

38. The IMM argues that PJM’s compliance filing fails to include a milestone specifying that the IMM will provide input to PJM and the Market Seller. The IMM states that its input to PJM and the Market Seller is needed for assurance and transparency. The IMM states that it is required to provide the results of its Fuel Cost Policy evaluation to Market Sellers and its input to PJM by August 1 of each year in PJM’s annual review process. The IMM explains that it will provide similarly timely input in the 45-day review process described in proposed section 2.2, Schedule 2. The IMM requests that the Commission direct PJM to include a statement, in section II. A of Attachment M-Appendix of the Operating Agreement and Schedule 2,⁷¹ that the IMM will provide timely input to PJM and the Market Seller regarding the compliance with the Fuel Cost Policy.⁷²

⁶⁷ *Id.*

⁶⁸ *Id.*; proposed section 2.2(b), Schedule 2, of the Operating Agreement.

⁶⁹ March 6 Filing at 6; proposed section 2.2(a), Schedule 2, of the Operating Agreement.

⁷⁰ March 6 Filing at 6.

⁷¹ The Cost Development Guidelines of PJM Manual 15.

⁷² IMM First Comments at 3-4.

39. The IMM states that it supports PJM's requirement for a provisional Fuel Cost Policy for new units because the requirement would ensure that Market Sellers submit verifiable and systematic Fuel Cost Policies and PJM and IMM will have the ability to review cost-based offers in a timely manner. While the IMM supports the PJM provisional requirement, the IMM recommends that the same provisional rules apply when the ownership of a generating resource is transferred.⁷³

4. PJM Answer

40. PJM argues that the IMM's proposed revision to Attachment M-Appendix of the Tariff is not needed because the Tariff already provides that: "The Market Monitoring Unit shall review all Fuel Cost Policies submitted by Market Sellers for market power concerns. The Market Monitoring Unit shall communicate its determination regarding these criteria to PJM and the Market Seller *pursuant to the process further described in*

PJM Manual 15."⁷⁴ PJM further states that at its Markets and Reliability Committee Meeting of March 23, 2017, stakeholders have endorsed provisions regarding the review of Fuel Cost Policy outside the annual review period to be effective May 15, 2017. Section 2.3.1.2 (Outside Annual Review/New Resource) provides that: "... Outside the annual review period, *PJM and the MMU will have an initial 30 Business Days for review. PJM shall consult with the MMU, and consider any input timely received from the Market Monitoring Unit, in its determination of whether to approve a Market Seller's updated Fuel Cost Policy. . . .*"⁷⁵

41. PJM also states that its stakeholders have already endorsed the provision that requires the IMM to provide the review of its evaluation to PJM and the Market Seller, in writing, by no later than August 1.⁷⁶ PJM states that if the Commission believes that

⁷³ *Id.* at 2-3.

⁷⁴ PJM First Answer at 4; PJM, Intra-PJM Tariffs, OATT, Attachment M-Appendix, Art. II.A (emphasis added in original).

⁷⁵ PJM First Answer at 4; *see* PJM's Markets and Reliability Committee: Revisions to PJM Manual 15: Cost Development Guidelines (Mar. 27, 2017) <http://www.pjm.com/~media/committees-groups/committees/mrc/20170323/20170323-item-05-draft-manual-15-revisions.ashx> (emphasis added in original).

⁷⁶ Section 2.3.1.1 of Manual 15 provides:

On an annual basis, all Market Sellers will be required to either submit to PJM and the MMU an updated Fuel Cost Policy that complies with Operating Agreement, Schedule 2

PJM should provide detailed timelines related to receipt of the IMM's input and advice regarding a Fuel Cost Policy in the Tariff or Operating Agreement, PJM will not object to doing so.⁷⁷

42. PJM disagrees with the IMM's recommendation that the same provisional requirements for new resources apply to generation resources transferred between two Market Sellers. PJM argues that the provisional requirement does not apply to generation resources transferred between Market Sellers because commercial operational data does exist for such resources. Accordingly, PJM argues that there is no need to carve out special rules to account for resources that are transferred between Market Sellers and that the new Market Seller should obtain from the prior Market Seller all commercial operational data necessary to develop an appropriate Fuel Cost Policy for the resource prior to submitting cost-based offers.⁷⁸

5. Commission Determination

43. We find that PJM's explanation of the timeline, with milestones for how PJM and the IMM will process submitted Fuel Cost Policies, satisfies the conditions of the February 2017 Order. Regarding the IMM's argument that the Commission should require PJM to include a statement in section II. A of Attachment M-Appendix of the Operating Agreement and Schedule 2 that the IMM will provide timely input to PJM and the Market Seller regarding the compliance of the Fuel Cost Policy, we find that PJM's proposed language added to section 2.3.1.1 of Manual 15, which was endorsed by stakeholders on March 27, 2017, provides the requested change. We will not require PJM to include the proposed language in its Tariff and Operating Agreement because, as

and this manual, or confirm that their currently effective and approved Fuel Cost Policy remains compliant. Market Sellers must submit such information by no later than June 15 of each year. The MMU shall review the Fuel Cost Policy, and shall consult with the Market Seller, to determine whether the Fuel Cost Policy raises market power concerns. ***The MMU shall provide the results of its review to PJM and the Market Seller, in writing, by no later than August 1.*** PJM shall consult with the MMU, and consider any input timely received from the Market Monitoring Unit, in its determination of whether to approve a Market Seller's updated Fuel Cost Policy (emphasis added in Manual 15).

⁷⁷ PJM First Answer at 5.

⁷⁸ *Id.* at 3.

PJM indicated, both the Cost Development Guidelines and the Tariff require that Market Sellers notify PJM and the IMM of any material changes to their Fuel Cost Policies for their review. Furthermore, section II. A of Attachment M-Appendix of the Operating Agreement provides that:

The Market Monitoring Unit shall review the incremental costs (defined in Section 6.4.2 of Schedule 1 of the Operating Agreement) included in the Offer Price Cap of a generating unit in order to ensure that the Market Seller has correctly applied the Cost Development Guidelines, including its PJM-approved Fuel Cost Policy, and that the level of the Offer Price Cap is otherwise acceptable. The Market Monitoring Unit shall inform PJM if it believes a Market Seller has submitted a cost-based offer that is not compliant with these criteria and whether it recommends that PJM assess the applicable penalty therefor, pursuant to Schedule 2 of the Operating Agreement.⁷⁹

44. The IMM recommends that the same rules related to provisional Fuel Cost Policies for new generation resources apply when the ownership of a generating resource is transferred. PJM disagrees and argues that the provisional requirement for Fuel Cost Policies strikes a reasonable balance between verifying new generating resources' cost-based offers with some degree of certainty for a limited amount of time and recognizing that Market Sellers cannot rely on commercial operational data in developing their Fuel Cost Policies.⁸⁰ We agree with PJM and find that the IMM has not shown that PJM's proposal to provide a longer time period for review and approval of new generation resources is unjust and unreasonable nor has the IMM supported its recommendation to allow for the same extended time period for a generation resource ownership transfer. However, we clarify that when a generation resource is transferred between two Market Sellers, the new Market Seller of the generation resource must reaffirm the current approved Fuel Cost Policy on file or submit an updated Fuel Cost Policy for review. Therefore, we direct PJM to submit revisions incorporating this clarification into section 2 of Schedule 2, within 30 days of the date of this order.

F. Variable Operation and Maintenance Adders

1. February 2017 Order

⁷⁹ See section II. A of Attachment M-Appendix of the Operating Agreement.

⁸⁰ PJM First Answer at 3.

45. The February 2017 Order accepted PJM's filing on the condition that PJM reorganize Schedule 2 of the Operating Agreement to ensure clarity and consistent application of the various cost components permitted under the Tariff. The Commission found that the organization of the Tariff, as proposed, was confusing as to which provisions were part of the Fuel Cost Policy and which were independent of that policy and procedures relating to it.⁸¹ Specifically, the Commission directed PJM to divide Schedule 2 into 5 parts: General Cost Provisions; Fuel Cost Policy; Emission Allowances/Adder; Variable Operation and Maintenance Adders; and Penalty Provisions. The Commission also required PJM to list under the heading in Schedule 2, "For all generating units," the following additional components included in fuel cost: emissions allowances/adders, variable operation and maintenance adders, and the ten percent adder."⁸² In addition, the Commission found that the provisions relating to verification of emission allowances (subsection (j)(iii)) and verification of variable operation and maintenance adders (subsection (j)(iv)) are not components of the Fuel Cost Policy.⁸³ The Commission also found that the provision relating to the verification of emission allowances also does not specify when such allowances should be reviewed, and therefore directed PJM to revise the provision to provide for an annual review.⁸⁴

2. March 6 Filing

46. PJM proposes to divide Schedule 2 of the Operating Agreement into five parts to comport with the Commission's directives.⁸⁵ PJM also lists the additional components under the heading "For all generating units" as directed by the Commission.⁸⁶ PJM also moves the provisions containing emissions and variable operating and maintenance costs to proposed sections 3.1(a) "Review of Emissions Allowances/Adders" and 4.1(a) "Review of Maintenance Adders" to comply with the Commission's directives. PJM

⁸¹ February 2017 Order, 158 FERC ¶ 61,133 at P 54.

⁸² *Id.* P 53.

⁸³ Market Sellers are not required to include the emissions allowances/adders or variable operation and maintenance adders in their Fuel Cost Policy submissions to PJM and the IMM. *Id.* at P 54 n.75.

⁸⁴ *Id.* P 54.

⁸⁵ PJM's proposed revision to Schedule 2 of the Operating Agreement.

⁸⁶ However, PJM uses the heading "Maintenance Adders" in place of "variable operating and maintenance adders," because the defined term "Maintenance Adder" includes "variable operating and maintenance expenses." March 6 Filing at 8.

states that these adders “must be submitted and reviewed at least annually by PJM and be changed if they are no longer accurate.”⁸⁷ PJM also proposes new sections 3.1(b) and 4.1(b), respectively “to require each Market Seller seeking to include emissions costs [or maintenance adder] in their cost-based offers to submit the appropriate emission cost [or maintenance adder] information to PJM and the IMM as part of the Market Seller’s

annual Fuel Cost Policy review process, as set forth in Operating Agreement, Schedule 2, section 2.6 (formerly proposed new subsection (k)).”⁸⁸

3. IMM Comments

47. The IMM challenges the March 6 Filing, arguing that PJM’s proposed sections 3.1(a) and 4.1(a) include a review and approval processes for emission allowances costs and variable operation maintenance costs that were not required by the Commission on compliance and should be rejected. The IMM also states that if the Commission finds the new provisions in scope for compliance, the Commission should require PJM to “add to Schedule 2 the same level of clarity and definition and transparency for these review standards as it has for Fuel Cost Policies.”⁸⁹ The IMM states that the proposed review of Fuel Cost Policies do not include a standard of approval for emission allowance costs and variable operation and maintenance, which would require that these costs be accurate and incremental.

4. Commission Determination

48. We accept PJM’s proposed Tariff revisions addressing the listing of cost components under the heading “For all generating units” and the reorganization of Schedule 2 of the Operating Agreement. The IMM challenges PJM’s proposed review and approval processes for emissions and variable operation and maintenance adders as beyond the scope of the Commission’s directives. We disagree. The February 2017 Order instructed PJM to revise the emission allowances and variable operating and maintenance adder provisions to provide for an annual review.⁹⁰ We find that PJM’s proposed revisions satisfy the Commission’s directives in the February 2017 Order.

⁸⁷ Proposed sections 3.1(a) and 4.1(a), Schedule 2, of the Operating Agreement.

⁸⁸ March 6 Filing at 9; proposed section 3.1(b), Schedule 2, of the Operating Agreement.

⁸⁹ IMM First Comments at 7-8.

⁹⁰ February 2017 Order, 158 FERC ¶ 61,133 at P 54.

G. Other Concerns Raised in the Compliance Filings

1. IMM's Position

49. The IMM argues that in the February 2017 Order, the Commission found that the definition of Flexible Resources should apply to both cost-based and market-based offers.⁹¹ The IMM states that PJM's March 6 Filing does not include revision of the definition of Flexible Resources to indicate that the term applies to both cost-based and market-based offers. Consequently, the IMM proposes the following update to the definition for clarity:

“Flexible Resource” shall mean a generating resource that must have a combined Start-up Time and Notification Time of less than or equal to two hours; and a Minimum Run Time of less than or equal to two hours, **in both its cost-based offers and its price-based offers.**⁹²

50. The IMM also argues that in the February 2017 Order, the Commission established a compliance obligation recommending that PJM list the “ten percent adder” in Schedule 2 of the Operating Agreement. According to the IMM, this listing is unnecessary because section 6.4.2, Schedule 1, to the Operating Agreement already provides for a 10 percent adder to be applied for incremental cost defined in Schedule 2 to the Operating Agreement. Therefore, the IMM requests that the Commission require PJM to remove the 10 percent adder from Schedule 2.⁹³

51. Finally, as directed in the February 2017 Order,⁹⁴ PJM removed the proposed Tariff revisions that would refer disputes between PJM and the IMM relating to PJM's approval of a generator's Fuel Cost Policy to the Commission's Office of Enforcement.⁹⁵ However, PJM states that it retains the reference “to FERC Office of Enforcement for resolution and determination whether the applicable penalties should be assessed” for any

⁹¹ IMM First Comments at 9 (citing February 2017 Order, 158 FERC ¶ 61,133 at P 111).

⁹² IMM First Comments at 9 (emphasis in original).

⁹³ *Id.* at 2.

⁹⁴ February 2017 Order, 158 FERC ¶ 61,133 at P 86.

⁹⁵ PJM's proposed revisions to Attachment M-Appendix, section II.A.5 of the Tariff.

disagreement between PJM and the IMM on whether a cost-based offer is in compliance with a Market Seller's approved Fuel Cost Policy in section 5.1(d) of Schedule 2 of the Tariff because: (1) the Commission did not require PJM to remove such reference from section 5.1(d) of the Tariff; (2) the provision in section 5.1(d) is different from the one PJM removes regarding disputes related to Fuel Cost Policy; and (3) the provision in section 5.1(d) is consistent with "the existing provisions in Tariff, Attachment M, Article IV, section I.1, which directs the IMM to refer any claims that PJM is violating its Tariff to the Commission's Office of Enforcement, which provisions the Commission required PJM to incorporate in Order No. 719."⁹⁶

2. Commission Determination

52. In the February 2017 Order, the Commission noted that the definition of Flexible Resources should apply to both a resource's cost-based and market-based offer, but did not require PJM to update the definition of Flexible Resources in its compliance filing. We find that the clarification in the February 2017 Order on this definition was sufficient and that it was unnecessary to incorporate this language into the definition of Flexible Resources. However, for added clarity regarding the rules of offer parameter flexibility for Flexible Resources, we direct PJM to include in section 1.10.9B Offer Parameter Flexibility, a new subsection (e) to state the following: "For Flexible Resources, Market Sellers must have a combined Start-up Time and Notification Time of less than or equal to two hours, and a Minimum Run Time of less than or equal to two hours. Specific to Flexible Resources, these offer parameters apply to both the market-based offers and cost-based offers submitted by a Market Seller and, in order to remain eligible for Flexible Resource status, these offer parameter requirements must be met by the Flexible Resource throughout the Operating Day." We direct PJM to make this revision within 30 days of the date of this order.

53. In the February 2017 Order, the Commission required PJM to include in Schedule 2 of the Operating Agreement, a list of components of cost permitted in cost-based offers, including the ten percent adder. With respect to the IMM's request to direct PJM to remove the 10 percent adder from Schedule 2 of the Operating Agreement, we disagree. As the Commission stated in the February 2017 Order, we required PJM to simply list the components to provide clarity as to which cost components could be used to determine a Market Seller's cost-based offer. We find that listing the 10 percent adder in Schedule 2 would not result in the double application of the 10 percent adder, as the IMM suggested, and therefore, reject the IMM's protest.

54. In the February 2017 Order, the Commission directed PJM to remove its proposed Tariff revisions that would refer disputes between PJM and the IMM relating to PJM's approval of a generator's Fuel Cost Policy to the Commission's Office of Enforcement.

⁹⁶ March 6 Filing at 14.

While we agree with PJM that the Commission did not require PJM to remove the reference to “FERC Office of Enforcement for resolution and determination whether the applicable penalties should be assessed,” we note that the expression “for resolution and determination whether the applicable penalties should be assessed” is not found in section I.1, Attachment M, Article IV, of the PJM Tariff. Therefore, we require PJM to delete that clause, so that section 5.1(d), Schedule 2, of the Operating Agreement reads as follows:

If upon review of a Market Seller’s cost-based offer PJM and the Market Monitoring Unit disagree about whether the offer is in compliance with the Market Seller’s PJM-approved Fuel Cost Policy, PJM and/or the Market Monitoring Unit may confidentially refer the matter to FERC Office of Enforcement ~~for resolution and determination whether the applicable penalties should be assessed.~~⁹⁷

55. We direct PJM to make the above revision in a compliance filing within 30 days of the date of this order.

H. Request for Clarification

1. PJM’s Request

56. PJM seeks clarification that the February 2017 Order’s language related to disputes over approval of Fuel Cost Policies and application of penalties should not be read to suggest that the IMM can initiate a complaint against PJM when it disagrees with a Fuel Cost Policy accepted by PJM, when PJM accepts an offer that the IMM believes is inconsistent with a Market Seller’s Fuel Cost Policy, or when the IMM disagrees with PJM with respect to whether a penalty should be applied to a Market Seller’s cost-based offer.⁹⁸

57. PJM explains that in Order No. 719, the Commission held that market monitoring units were required to report any misconduct by the Regional Transmission Organization (RTO), Independent System Operator (ISO), or market participants to the Commission and expanded the market monitoring unit’s referral obligations to include perceived

⁹⁷ Given the required changes in *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,030 at P 67, section 5.1 of Schedule 2 should now be section 6.1.

⁹⁸ PJM Request for Clarification at 3.

market design flaws as well as instances of tariff or rule violations.⁹⁹ PJM also explains that for Tariff violations, the IMM must submit a written referral to the Commission's Office of Enforcement,¹⁰⁰ and for perceived market design flaws, the IMM must make a referral to the Commission's Director of the Office of Energy Market Regulation.¹⁰¹

58. PJM further states that Attachment M of the PJM Tariff contains provisions governing the manner in which the IMM should refer different kinds of concerns regarding market power issues to the Commission. PJM states that the provisions in Attachment M of the Tariff permit the IMM to raise concerns to the Commission by means of a petition or other regulatory proceedings regarding market power issues related to a market participant's use of an offer or cost input used in PJM's energy or ancillary service markets.¹⁰² PJM argues that these tariff provisions were intended to clarify the respective roles and responsibilities of Market Sellers, PJM and the IMM regarding a Market Seller's offers into PJM's markets, and provide the IMM with the right to file a complaint in only one circumstance – when the IMM objects to a Sell Offer in a capacity

⁹⁹ *Id.* at 4 (citing Order No. 719, 125 FERC ¶ at P 311; *see also PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,250, at PP 214, 219, n.178 (2009)). PJM states that it has incorporated this requirement into its OATT, Attachment M, Article IV, section I.1, which it asserts mirrors the Commission's regulations.

¹⁰⁰ *Id.* at 4 (citing PJM, Intra-PJM Tariffs, OATT, Attachment M, Art. IV, § I.1; 18 C.F.R. § 35.28(g)(iv)).

¹⁰¹ *Id.* at 4 (citing PJM, Intra-PJM Tariffs, OATT, Attachment M, Art. IV, § I.2; 18 C.F.R. § 35.28(g)(v)).

¹⁰² *Id.* at 5 (citing PJM, Intra-PJM Tariffs, OATT, Attachment M, Art. IV, § E-1: "In the event that a market participant determines to use an offer or cost input at a level or value that the Market Monitoring Unit has found to involve a potential exercise of market power, the Market Monitoring Unit may file a petition or initiate other regulatory proceedings addressing the issue").

auction,¹⁰³ and Attachment M of the Tariff does not contemplate any other circumstances under which it would be appropriate for the IMM to file a complaint against PJM.¹⁰⁴

59. Further, PJM argues that the PJM Board of Managers (PJM Board) oversees both PJM management and the IMM, and these rules eliminate the problem of placing the PJM Board in “the unworkable position of reconciling the fiduciary duty of loyalty it owes to the PJM organization with its Tariff-obligated duty to oversee an entity which has sued the PJM organization.”¹⁰⁵ PJM therefore seeks clarification that the Commission’s statement in the February 2017 Order was not intended to extend to the IMM any right to file a complaint beyond the provisions of Attachment M.¹⁰⁶

2. IMM First Answer

60. The IMM states that PJM’s Request for Clarification is an attack on the independence of the market monitoring function and should be rejected. The IMM further notes that PJM’s request amounts to a request for rehearing of Rule 206 of the Commission’s Rule of Practice and Procedure that is decades late.¹⁰⁷ The IMM argues that Rule 206 allows any person to file a complaint seeking Commission action against another person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission, and that it meets the broad definition of a

“person” and Rule 206 applies and PJM meets the definition of another “person” who may be named in complaints as defined by Rule 102(d).¹⁰⁸

¹⁰³ PJM states that if, however, the IMM has market power concerns “related to a Sell Offer submitted in an RPM Auction,” the Tariff specifically provides that the IMM may file a complaint with the Commission. PJM Request for Clarification at 5 n.13 (citing PJM, Intra-PJM Tariffs, OATT, Attachment M, Art. IV, § E-1: “If the potential exercise of market power is related to a Sell Offer submitted in an RPM Auction, the Market Monitoring Unit may file a complaint with the Commission addressing the issue”).

¹⁰⁴ *Id.* at 6.

¹⁰⁵ *Id.* at 6 n.18.

¹⁰⁶ *Id.* at 6.

¹⁰⁷ IMM First Answer at 1-3.

¹⁰⁸ *Id.* at 4-5. Rule 206 of the Commission’s Rules of Practice and Procedure,

61. The IMM states that the Tariff provides that if the IMM detects “a Market Violation involving potential misconduct,” it shall refer that matter to the Commission’s Office of Enforcement,¹⁰⁹ but it also provides that:

If the Market Monitoring Unit . . . determines that there is an issue about the proper and lawful application of a rule . . . and the issue involves a difference about the appropriate calculation of the level of an input, the Market Monitoring

Unit may file a petition or initiate other regulatory proceedings addressing the issue.¹¹⁰

18 C.F.R. § 385.206 (2018), provides that:

Any person may file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction.

Rule 102(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.102(d) (2018), provides the following definition of “a person”:

[P]erson means an individual, partnership, corporation, association, joint stock company, public trust, an organized group of persons, whether incorporated or not, a receiver or trustee of the foregoing, a municipality, including a city, county, or any other political subdivision of a State, a State, the District of Columbia, any territory of the United States or any agency of any of the foregoing, any agency, authority, or instrumentality of the United States (other than the Commission), or any corporation which is owned directly or indirectly by the United States, or any officer, agent, or employee of any of the foregoing acting as such in the course of his or her official duty.

¹⁰⁹ PJM, Intra-PJM Tariffs, OATT, Attachment M, § IV.D-1.

¹¹⁰ *Id.*

62. The IMM states that, because the PJM Tariff authorizes the IMM to “file a petition or initiate other regulatory proceedings” to resolve compliance issues, it is not limited to doing so with regard to disputes over offer levels.¹¹¹ The IMM argues that, contrary to PJM’s argument, the Tariff contains no specific limitation that the IMM may only file a complaint against a Market Seller but may not file a complaint against PJM. The IMM states that, while it anticipates that some of such complaints would name the responsible market participants, this is not always the case and now that PJM has the explicit role of approving Fuel Cost Policies, which may result in market power concerns, the prospect of a dispute between the IMM and PJM is enhanced. The IMM argues that the Tariff also enables the IMM to make filings with the Commission on market design issues, and since PJM is responsible for its market design, it would be named in most of those filings. The IMM points out that PJM was named in a complaint that was filed by the IMM, which was accepted and resolved.¹¹²

63. The IMM also argues that Order No. 719 does not grant RTOs/ISOs immunity from complaints filed by their market monitors.¹¹³ The IMM explains that the Order No. 719 referral process for market design flaws was meant to allow the IMM to refer the flaws to the Commission on a confidential basis to avoid exploitations of those flaws by market participants while the Commission determines how to address the issue, but that process is not designed to resolve disputes between RTOs/ISOs and their market monitors.¹¹⁴ Rather, the IMM argues, when a market monitor seeks to challenge a rule or the interpretation of a rule, that process should be public and transparent, and enable stakeholders to participate – goals that would be defeated by PJM’s Request for Clarification.¹¹⁵

¹¹¹ IMM First Answer at 5-6.

¹¹² *Id.* at 7. The IMM’s pleading references *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,0250 (2016), but the IMM appears to be referring to *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,059 (2016) (Commission finds that the IMM failed to meet its burden of proof under FPA section 206 to show that PJM’s capacity market rules fail to treat demand response resources in a manner comparable to generation capacity resources by not requiring a must-offer requirement and an offer cap on energy offers, as required for generation resources).

¹¹³ IMM First Answer at 8.

¹¹⁴ *Id.* (citing 18 C.F.R. § 35.28 (g)(3)(v)(A)).

¹¹⁵ IMM First Answer at 7-8 & n.18 (citing to Order No. 719, 125 FERC ¶ 61,071 at P 316 (purpose of reforms in Order No. 719 is to “strengthen [market monitor]

64. The IMM argues that PJM mischaracterizes the relationship between the PJM Board and the IMM, as the PJM Board contracts with, but does not oversee, the IMM.¹¹⁶

65. The IMM further argues that an important aspect of a market monitor's independence and objectivity is the ability of market monitors to take disputes with their RTOs/ISOs to the Commission.¹¹⁷ Finally, the IMM argues that impartiality and objectivity do not require that the IMM agree with PJM.¹¹⁸

3. Additional Answers

66. PJM, in its answer to the IMM's answer, states that it questions whether the IMM should be permitted to file an action against PJM in its capacity as the market monitor, using time and resources paid for by the general PJM membership through PJM. PJM reiterates that the use of time and resources budgeted to the IMM by the PJM Board to enable it to sue PJM in its capacity as market monitor creates conflicts for the PJM Board, limits PJM's Finance Committee in providing real fiscal oversight, and cannot have been what the Commission envisioned when it charged transmission organizations with the duty to provide market monitoring.¹¹⁹ PJM again notes that the PJM Tariff provides the IMM with other avenues to express its views and positions that are adverse to PJM.¹²⁰

independence”).

¹¹⁶ *Id.* at 6 (citing PJM, Intra-PJM Tariffs, OATT, Attachment, § III).

¹¹⁷ *Id.* at 8.

¹¹⁸ *Id.*

¹¹⁹ PJM Second Answer at 2-3. PJM notes that in Order No. 2000, the Commission could have chosen a different oversight and governance structure to manage the accountability of market monitors without putting RTO/ISO boards in unworkable positions – including the option of a structure that positioned market monitoring as part of the Commission's own regulatory and audit oversight. *See Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,145 (1999) (cross-referenced at 89 FERC ¶ 61,285), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

¹²⁰ PJM Second Answer at 2-3.

67. The IMM, in its response to PJM's response, again states that Rule 206 gives it the right to file a complaint against PJM. The IMM further states that the PJM Board oversees the contract with the IMM, but has no supervisory authority over the independent market monitoring function, including the IMM's participation in stakeholder or regulatory processes, and that that contract requires the IMM to operate independently of the PJM Board. The IMM notes that similarly, the Finance Committee obtains information from the IMM about its budget, but does not have oversight authority over the IMM's actions. Finally, the IMM states that neither the PJM Board nor PJM staff has full control over most of PJM's regulatory filings, since the Operating Agreement gives PJM members significant influence over such filings, and the IMM is uniquely positioned to develop and advocate an independent position based solely on the public interest in competitive and efficient PJM markets.¹²¹

68. Other parties filed pleadings generally supporting the IMM's position.¹²² The Ohio Consumers' Counsel points out that if the IMM is barred from filing a complaint against PJM relating to PJM's acceptance of a Market Seller's Fuel Cost Policy or whether a Market Seller complied with its Fuel Cost Policy, in some circumstances no other party could bring such a complaint, since only the IMM would have the information (provided on a confidential basis) to enable it to file a complaint in a timely manner.¹²³

4. ODEC Decision

69. On June 19, 2018, PJM filed a Notice of Recent Appellate Precedent to notify the Commission of a recent appellate decision denying intervention to PJM's independent market monitor in an appeal of a Commission determination, on the basis that the IMM lacked standing.¹²⁴ PJM asserted that the court's ruling that "the market monitor lack[ed] any distinct and legally recognizable interest or right" apart from PJM supported PJM's position that the IMM should not be able to file a complaint against it with the Commission.¹²⁵ The IMM opposed this position, arguing that standing before the D.C.

¹²¹ IMM Second Answer at 3-5.

¹²² The Ohio Consumers' Counsel, Joint Consumer Advocates, and OPSI filed answers in support of the arguments raised by the IMM in its answers.

¹²³ Ohio Consumers' Counsel May 8, 2017 Answer at 4-5.

¹²⁴ *Old Dominion Electric Cooperative v. FERC*, 892 F.3d 1223 (D.C. Cir. 2018) (ODEC).

¹²⁵ PJM Notice of Recent Appellate Precedent, Docket No. ER16-372-004 (June

Circuit as a matter of right is subject to the requirements of Article III of the U.S. Constitution, and the D.C. Circuit has held that that requirement does not apply to proceedings before federal agencies.¹²⁶

5. Commission Determination

70. We deny PJM's request that the Commission clarify that the IMM may not file a complaint against PJM with regard to PJM's acceptance of a Fuel Cost Policy with which the IMM disagrees or a Market Seller's possible non-compliance with its Fuel Cost Policy, and related penalty assessments by PJM.

71. PJM argues that its Tariff provides the IMM the right to file a complaint with the Commission in only one circumstance, namely, when the IMM objects to a Sell Offer in a capacity auction.¹²⁷ PJM asserts that its Tariff does not contemplate the IMM filing a complaint against PJM in any other circumstance, and contends that providing such a right would be inappropriate.¹²⁸

72. Although PJM is correct that its Tariff explicitly delineates one instance in which the IMM has the right to file a complaint with the Commission, the inclusion of an express right to bring a complaint does not necessarily foreclose an entity's general right to file complaints under section 206 of the FPA. In any case, we need not reach that issue here because we are unpersuaded by PJM's narrow reading of Attachment M.¹²⁹ For the

19, 2018).

¹²⁶ Response of Independent Market Monitor, Docket No. ER16-372-004 at 2 (June 26, 2018) (citing, *inter alia*, *Chamber of Commerce of the United States v. SEC*, 443 F.3d 890, 897 (2006) (“administrative agencies, unlike federal courts, are not jurisdictionally constrained by the case-and-controversy limitation in Article III”).

¹²⁷ PJM Request for Clarification at 5-6; PJM, Intra-PJM Tariffs, OATT, Attachment M, Art. IV, § E-1.

¹²⁸ PJM Request for Clarification at 6.

¹²⁹ We note, however, that the Commission has previously suggested that the IMM may be able to bring a section 206 complaint. *See PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,195, at P 22 (2014) (“The Market Monitor is not precluded from filing a complaint, pursuant to section 206 of the Federal Power Act, which demonstrates how the JDA renders the DEP-PJM JOA unjust and unreasonable”).

reasons that follow, we find that Attachment M permits the IMM to file a complaint against PJM regarding a Market Seller's Fuel Cost Policy.

73. Attachment M provides that “the Market Monitoring Unit shall review all proposed sell offers for a determination of whether they raise market power concerns” and “determine whether the level of offer or cost inputs raises market power concerns.”¹³⁰ The Fuel Cost Policy is closely related to the responsibilities that Attachment M explicitly assigns to the IMM because the Fuel Cost Policy is integral to the determination of whether generators have submitted reasonable cost-based offers in the event market power mitigation is required.

74. Attachment M further provides that “[i]n the event that a market participant determines to use an offer or cost input at a level or value that the Market Monitoring Unit has found to involve a potential exercise of market power, the Market Monitoring Unit *may file a petition or initiate other regulatory proceedings* addressing the issue.”¹³¹ Filing a complaint on the Fuel Cost Policy with the Commission is a method of initiating a regulatory proceeding that falls within the language of this provision.

75. PJM further argues that permitting the IMM to file complaints against PJM would create a conflict of interest for the PJM Board because of its budget oversight responsibilities as to both PJM and the IMM. At the same time, PJM acknowledges that the Tariff allows the IMM to file complaints against PJM in certain circumstances. We are unpersuaded by PJM's argument, as it is unclear why only complaints that fall outside of the Tariff's explicit grant of rights to the IMM would be problematic with respect to the PJM Board's ability to fulfill its responsibilities.

76. Finally, we reject PJM's position that the D.C. Circuit's recent *ODEC* decision, which found that the IMM lacked standing to intervene in an appeal of a Commission order, supports the denial of the IMM's right to file a complaint against PJM. Article III of the Constitution governs participation in litigation before the U.S. Courts of Appeals,

¹³⁰ PJM Tariff, Attachment M, Article IV, section E-1.

¹³¹ *Id.* (emphasis added). Attachment M, Section D-1, describes a similar responsibility in another circumstance: “If the Market Monitoring Unit detects a compliance issue and determines that there is an issue about the proper and lawful application of a rule, and the Market Monitoring Unit makes a preliminary determination that no misconduct is evident and the issue involves a difference about the appropriate calculation of the level of an input, the Market Monitoring Unit may file a petition or initiate other regulatory proceedings addressing the issue. The Market Monitoring Unit may, where it deems appropriate, submit a confidential Referral and initiate a public regulatory proceeding concerning the same underlying matter.”

but “agencies are free to hear actions brought by parties who might be without standing if the same issues happened to be before a federal court.”¹³² Thus, the Article III requirement does not apply to proceedings before federal agencies. The Commission recently addressed the question of the IMM’s participation in Commission proceedings seeking to ensure that the rates for reactive power service within the PJM footprint are just and reasonable. The Commission found that the IMM’s participation was in the public interest under the Commission’s rules at 18 C.F.R. § 385.214(b)(2) (2018), and rejected PJM’s suggestion that *ODEC* should counsel a different result.¹³³ Similar considerations guide us in our decision here.

The Commission orders:

(A) PJM’s proposed Tariff and Operating Agreement revisions are hereby accepted, as discussed in the body of this order, to become effective May 15, 2017 and November 1, 2017, as discussed above.

(B) PJM’s request for clarification of the Commission’s February 2017 Order is denied, as discussed in the body of this order.

(C) PJM is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Glick is concurring with a separate statement attached.

Commissioner McNamee is not participating.

(S E A L)

¹³² *Gardner v. FCC*, 234, 530 F.2d 1086, 1090–91 (D.C. Cir. 1976) (citing *Ecee, Inc. v. FERC*, 645 F.2d 339, 349-50 (5th Cir. 1981). See also *Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72, 74 (D.C. Cir. 1999) (“Agencies . . . are not constrained by Article III of the Constitution; nor are they governed by judicially-created standing doctrines restricting access to the federal courts. The criteria for establishing ‘administrative standing’ therefore may permissibly be less demanding than the criteria for ‘judicial standing’” (citations omitted)).

¹³³ *PA Solar Park, LLC*, 164 FERC ¶ 61,118, at PP 13-14 (2018).

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Tariff Records Filed PJM Interconnection, L.L.C. FERC FPA Electric Tariff Intra-PJM Tariffs

Docket No. ER16-372-003

[OATT Definitions – E - F, 8.1.0](#)

[OATT Definitions – I – J - K, 5.1.0](#)

[OATT Definitions – L – M - N, 8.1.0](#)

[OATT Attachment K Appendix Sec 1.2 Cost-based Offers, 1.3.0](#)

[OATT Attachment K Appendix Sec 1.10 - Scheduling, 25.2.0](#)

[OATT Attachment K Appendix Sec 3.2 - Market Buyers, 36.1.0](#)

[OATT Attachment K Appendix Sec 6.4 Offer Price Caps, 8.2.0](#)

[OATT ATTACHMENT M – APPENDIX, 14.1.0](#)

[OA Definitions E - F, 5.1.0](#)

[OA Definitions I - L, 9.1.0](#)

[OA Definitions M - N, 6.1.0](#)

[OA Schedule 1 Sec 1.2 Cost-based Offers, 1.2.0](#)

[OA Schedule 1 Sec 1.10 - Scheduling, 26.2.0](#)

[OA Schedule 1 Sec 3.2 - Market Buyers, 33.2.0](#)

[OA Schedule 1 Sec 6.4 Offer Price Caps., 8.2.0](#)

[OA SCHEDULE 2, 4.1.0.](#)

Appendix A (Continued)

Docket No. ER16-372-005

[OATT Attachment K Appendix Sec 1.10 - Scheduling, 25.3.0](#)

[OA Schedule 1 Sec 1.10 - Scheduling, 26.3.0](#)

[OA SCHEDULE 2, 4.2.1.](#)

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket Nos. ER16-372-003
ER16-372-004
ER16-372-005

(Issued April 29, 2019)

GLICK, Commissioner, *concurring*:

1. I join today’s order in full. I write separately to highlight my support for the Commission’s conclusion that PJM Interconnection, L.L.C.’s (PJM) Independent Market Monitor can bring a complaint against PJM related to Fuel Cost Policy. As the Commission observed in Order No. 719, market monitors had long played a “vital role” by, among other things, observing and reporting on the organized markets and “ferreting out wrongdoing by market participants.”¹ The Commission recognized that these responsibilities were critical to “[i]mproving the competitiveness of organized markets” and, by extension, ensuring that the rates those markets produce are just and reasonable and not unduly discriminatory or preferential.² Those responsibilities—and the task of market monitoring more generally—have only become more important in the intervening decade, as organized markets have expanded in scope and complexity. Market monitors now play a more important role than ever in protecting consumers by preventing anticompetitive or manipulative conduct.

2. I believe that a market monitor’s ability to bring a complaint under section 206 of the Federal Power Act is an important element in its repertoire for “[i]mproving the

¹ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071, at P 314 (2008), *order on reh’g*, Order No. 719-A, 128 FERC ¶ 61,059 (2009), *order on reh’g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009); *see also Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267, at P 1 (2005) (summarizing certain responsibilities of market monitors, including the responsibility to identify ineffective market rules and tariff provisions).

² Order No. 719, 125 FERC ¶ 61,071 at PP 1-2.

competitiveness of organized markets.”³ By virtue of its position and expertise, a market monitor will often be uniquely well-positioned to identify market design flaws and assemble a corresponding record sufficient to meet a complainant’s burden under section 206.⁴ As a result, a complaint by a market monitor may often be the most expeditious and effective avenue for remedying a market design aspect that has become unjust and unreasonable or unduly discriminatory or preferential. In light of that critical role, there is no reason to clip a market monitor’s wings by carving market monitors out from the broad set of potential complainants identified in the Commission’s Rules of Practice and Procedure.⁵

3. A market monitor’s ability to refer matters to Commission staff can provide a useful avenue for bringing concerns to the Commission’s attention, particularly where there is a potential for abuse in the interim period before the Commission decides whether to take corrective action. But confidential referrals are not a complete substitute for a transparent, on-the-record proceeding in which all interested entities have an opportunity to participate and address the merits of the market monitor’s arguments. Confining a market monitor’s role before the Commission to such referrals would not serve the public interest and would, instead, likely impair the competitiveness of organized markets.

For these reasons, I respectfully concur.

Richard Glick
Commissioner

³ *Id.*

⁴ *See, e.g., Emera Maine v. FERC*, 854 F.3d 9, 21 (D.C. Cir. 2017) (“The burden of demonstrating that the existing ROE is unlawful is on . . . the complainant.”).

⁵ *See PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,084, at P 60, n.108 (2019) (summarizing the Commission’s Rules of Practice and Procedure, which provide that any “person” can bring a section 206 complaint, with person having a capacious definition that includes, among other things, any “individual, partnership, corporation, [or] association”); 18 C.F.R. §§ 385.102(d), 385.206 (2018).