

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

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PJM Interconnection, L.L.C.

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Docket Nos. ER18-1314-000  
ER18-1314-001

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**MOTION TO STRIKE,  
MOTION FOR LEAVE TO ANSWER, AND ANSWER  
OF THE ILLINOIS COMMERCE COMMISSION**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,<sup>1</sup> the Illinois Commerce Commission (“ICC”) submits this Motion to Strike, Motion for Leave to Answer, and Answer to the Answers submitted on May 25, 2018 by PJM Interconnection, L.L.C. (“PJM”) and the Independent Market Monitor for PJM (“IMM”) in the above-captioned dockets. The ICC filed a Notice of Intervention in this docket on April 12, 2018, and therefore, is a party to the docket.

**I. MOTION TO STRIKE**

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,<sup>2</sup> the ICC respectfully submits this motion to strike the Answer of PJM Interconnection, L.L.C. (“PJM”) filed May 25, 2018, (“PJM Answer”) and the Answer of the Independent Market Monitor for PJM (“IMM Answer”). The PJM Answer to Protests and the untimely response to the ICC Motion to Dismiss should be stricken. The IMM Answer misrepresents the pertinent Illinois legislation and does not assist with any decision making process.

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.213.

<sup>2</sup> 18 C.F.R. § 382.212.

The Commission rules are clear that an answer may not be made to a protest.<sup>3</sup> In seeking leave to answer, PJM asserts that its answer will assist and clarify.<sup>4</sup> However, it actually does the opposite. PJM fails to show any actual market manipulation or impact that would warrant mitigation or repricing. Moreover, PJM improperly seeks to respond out of time to the ICC Motion to Dismiss filed on May 7, 2018. Commission Rule 213 requires that any answer to a motion must be made within 15 days after the motion is filed.<sup>5</sup> PJM points to the Illinois state program as “one of the state programs prompting the need for action now.”<sup>6</sup> As support for its proposition, PJM misrepresents three pages of the ICC Motion to Dismiss.<sup>7</sup> PJM’s footnote 11 and its accompanying text in the PJM Answer is an untimely and improper response to the ICC Motion to Dismiss. Any answers to the motion should have been submitted within the 15 day period allowed under the rules, or by May 22, 2018. To the extent that PJM’s Answer responds to the ICC’s arguments supporting dismissal, PJM’s response should be stricken as it was filed outside the required timeframe.

Moreover, rather than a mere response to protests, PJM is seeking to supplement its filing with new information. On pages 7-11, PJM seeks to introduce via footnote new information in the form of legislative committee meeting testimony, and Brattle Group report and chart.<sup>8</sup> To the extent that PJM seeks to enter this new information, it should do so in the form of a supplement to its initial filing and provide the parties with an opportunity to review and respond to it. We believe that PJM’s example of “actual proof of concept” found in testimony offered to the New Jersey assembly is not substantiated and not relevant to the proceeding here.

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<sup>3</sup> 18 C.F.R. § 385.213(a)(2).

<sup>4</sup> PJM Answer at 1, n.1.

<sup>5</sup> 18 C.F.R. § 385.213(d)(1).

<sup>6</sup> PJM Answer, at 5.

<sup>7</sup> PJM Answer at 5, n.11.

<sup>8</sup> PJM Answer, at 7-10, nn. 15-20.

Similarly, the IMM Answer contains inaccuracies with respect to the Illinois Future Energy Jobs Act legislation.<sup>9</sup> As discussed below in section III.A, the IMM Answer does not accurately reflect the Illinois legislation and, therefore, the IMM Answer does not provide information that is useful to the Commission and should be disallowed.

WHEREFORE, for the reasons set forth above, the PJM Answer and the IMM Answer should not be permitted.

## II. MOTION FOR LEAVE TO ANSWER

Pursuant to Rule 212 of the Commissions Rules of Practice and Procedure, the ICC does hereby submit this motion for leave to Answer PJM's Answer filed on May 25, 2018.<sup>10</sup> The Commission's Rules of Practice and Procedure,<sup>11</sup> do not generally permit answers to answers unless otherwise ordered by the Commission. The Commission makes exceptions, however, and will allow answers to answers when the proposed answer will assist the Commission in its decision-making process by clarifying the issues and/or creating a more complete record.<sup>12</sup> The ICC believes that PJM and the IMM have made arguments containing significant and material inaccuracies that require correction and clarification. In particular, PJM has raised new information in its Answer regarding legislative committee meeting testimony, and Brattle Group report and chart. To the extent that the Commission may decide to permit those Answers, the

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<sup>9</sup> Future Energy Jobs Act, Public Act 99-906, 20 ILCS 3855/1-75(d-5)(1)(C) ("FEJA" or "ZEC" or "ZES" Legislation).

<sup>10</sup> The ICC does not believe a motion to file an answer to the PJM and IMM Answers out of time is necessary, but to the extent that it may be required and/or considered to be out of time, the ICC does hereby so move pursuant to Commission Rule 212, 18 C.F.R. § 385.212. The ICC seeks to correct the contradictions and inaccuracies contained in those Answers to the ICC Protest. Given the significant impact this proceeding has on Illinois and its ratepayers, good cause exists to permit this Answer.

<sup>11</sup> 18 CFR § 385.213(a)(2).

<sup>12</sup> See e.g., *PJM Interconnection, L.L.C.*, 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that "provided information that assisted ... decision-making process"); *California Independent System Operator Corporation*, 110 FERC ¶ 61,007 (2005) (answer to answer permitted to assist Commission); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission); and *N.Y. Independent System Operator, Inc.*, 121 FERC ¶ 61,112 at P 4 (2007) (answer to protest accepted because it provided useful information to the Commission).

ICC must be allowed to respond to the new information. In this Answer, the ICC provides additional information for a more complete and accurate record that will assist the Commission in its decision-making. Accordingly, the ICC respectfully requests that the Commission permit this Answer should the Commission decide to permit the PJM and IMM Answers to stand.

### III. ANSWER

#### **A. PJM and the IMM's Answers Fail to Respect States' Authority to Establish Environmental Policy and, Therefore, Must be Rejected.**

PJM incorrectly states that the state programs of which it complains, specifically Illinois' Zero Emission Standard ("ZES"), "are designed to retain particular nuclear resources."<sup>13</sup> The IMM makes similar incorrect assertions.<sup>14</sup> The purpose of Illinois' ZES statute, however, is stated clearly in that statute, specifically:

The General Assembly therefore finds that it is necessary to establish and implement a zero emission standard, which will increase the State's reliance on zero emission energy through the procurement of zero emission credits from zero emission facilities, in order to achieve the State's environmental objectives and reduce the adverse impact of emitted air pollutants on the health and welfare of the State's citizens.<sup>15</sup>

Consistent with these findings, Public Act 99-906 provides for a zero-emission facility procurement plan and provides:

. . . winning bids shall be selected based on public interest criteria that include, but are not limited to, minimizing carbon dioxide emissions that result from electricity consumed in Illinois and minimizing sulfur dioxide, nitrogen oxide and particulate matter emissions that adversely affect the citizens of the State.<sup>16</sup>

Eligibility to bid to receive zero emission credits ("ZECs") under the Illinois statute was not limited to any particular unit(s) or company(ies), but, rather, was open to any facility fueled by

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<sup>13</sup> *Id.* at 15-16 (emphasis added).

<sup>14</sup> IMM Answer, at 6.

<sup>15</sup> P.A. 99-906, § 1-5 (eff. June 1, 2017) (emphasis added).

<sup>16</sup> 20 ILCS 3855/1-75(d-5)(1)(C).

nuclear power and interconnected either to PJM or the Midcontinent Independent System Operator, Inc. Specifically, the Illinois statute states:

“Zero emission facility” means a facility that: (1) is fueled by nuclear power; and (2) is interconnected with PJM Interconnection, LLC or the Midcontinent Independent System Operator, Inc., or their successors.<sup>17</sup>

PJM and the IMM criticize the Illinois ZES legislation asserting that it is specifically designed to retain units at risk for retirement.<sup>18</sup> Contrary to PJM and IMM assertions, financial criteria are not requirements of the statute. Instead, the statute directed the Illinois Power Agency and the ICC to take into account the incremental benefits of such units in the ZES unit procurement process. Specifically, the statute requires that the selection of winning bids:

. . . take into account the incremental environmental benefits resulting from the procurement, such as any existing environmental benefits that are preserved by the procurements held under this amendatory Act of the 99<sup>th</sup> General Assembly and would cease to exist if the procurements were not held, including the preservation of zero emission facilities.<sup>19</sup>

PJM and the IMM also question why Illinois chose to fund a limited number of ZECs and RECs rather than compensate all zero-carbon facilities.<sup>20</sup> Like the emphasis on retaining incremental benefits, limiting the number of credits is a practical element to reasonably balance ratepayer impact with achieving the desired environmental benefit.

The IMM incorrectly asserts that the purpose of Illinois’ ZES program is to “change the wholesale rate,” that “the Illinois ZEC subsidy is tethered to” and “targets the wholesale rate,” or that the ZEC is a “simple contract for differences.”<sup>21</sup> These statements are not correct as the

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<sup>17</sup> 20 ILCS 3855/1-10.

<sup>18</sup> PJM Answer, at 2; IMM Answer, at 6.

<sup>19</sup> 20 ILCS 3855/1-75(d-5(1)(C)).

<sup>20</sup> PJM Answer, at 16; IMM Answer, at 8.

<sup>21</sup> IMM Answer, at 6-8.

Commission has acknowledged.<sup>22</sup> The Commission should disregard all assertions to the contrary.

While neither PJM nor the IMM may supplant Illinois or other state legislatures' policy judgments as to environmental matters<sup>23</sup> or energy generation,<sup>24</sup> PJM and the IMM repeatedly criticize Illinois jurisdictional policy decisions.<sup>25</sup> Because Illinois ZES program and the related ZEC payments are squarely within Illinois' jurisdiction and are lawful, the Commission should respect the Illinois General Assembly's findings, goals and methods and reject PJM and the IMM's challenge of state authority.

PJM also asserts that the costs of Illinois ZEC payments will be "borne by all other sellers into the PJM market (regardless of their emission levels)."<sup>26</sup> This statement is also incorrect. All costs associated with the procurement of ZECs are borne by Illinois retail ratepayers,<sup>27</sup> not the participants in the wholesale markets.

PJM asserts without citation that commenters who believe that "providing a positive value (a subsidy) to those that do not impose the negative externality (the cost of carbon) is just as valid as pricing the negative externality" are wrong.<sup>28</sup> Given states' environmental authority and the Federal Power Act's reservation of authority with respect to "facilities used for the generation of electricity," these approaches are both valid means of achieving state public policy

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<sup>22</sup> See, Brief for the United States and the Federal Energy Regulatory Commission as *Amici Curiae* in Support of Defendants-Respondents and Affirmance, filed May 29, 2018, United States Court of Appeals for the Seventh Circuit, *Village of Old Mill Creek, et al., v. Anthony M. Star, et al.*, Case Nos. 17-2433 and 17-2445 (consolidated).

<sup>23</sup> See, PJM Answer, at 13.

<sup>24</sup> Federal Power Act, Section 201, 16 U.S.C. § 824(b)(2), "[t]he Commission . . . shall not have jurisdiction . . . over facilities used for the generation of electric energy . . ."

<sup>25</sup> See *e.g.*, IMM Answer, at 8 (ZECs do not provide payments based on the desirability of the attributes a unit possesses); The ZEC program does not reduce carbon at the lowest possible cost. *Id.* at 7; PJM Answer, 5-8.

<sup>26</sup> PJM Answer, at 20, n.39.

<sup>27</sup> 20 ILCS 3855/1-75(d-5(6)).

<sup>28</sup> PJM Answer, at 19.

objectives, are widely accepted, and have similar impacts on markets. Renewable Portfolio Standards (“RPS”), in particular, are used broadly across the PJM region based largely on the very same premise. PJM has found a way of accommodating those similar state policies within its market construct. It must also do so here.

The Commission previously and for many years has invited PJM to “account for resource attributes that reflect broader objectives,”<sup>29</sup> and to “begin a process to consider how to incorporate these features into RPM’s market design.”<sup>30</sup> However, PJM elected not to accept the invitation. Not surprisingly, given PJM’s choice to take no action in that regard, the states acted to fill the gap. PJM should not prevent Illinois from addressing its environmental concerns while PJM has implemented markets that ignore the issue.

PJM’s criticism of states’ policy choices to compensate non-emitters rather than impose a social cost on emitters is irrelevant. It is the state’s choice, and solely their choice, to pursue environmental objectives as each state deems appropriate. It is also the states’ choice to focus on the retention of sources of incremental environmental benefits, rather than compensating all production of environmental benefits. In the end, PJM finally admits, as it must, that it is not the Commission’s job to “evaluate the efficacy of state public policy programs.”<sup>31</sup>

### **B. State Energy Statutes Do Not Constitute Initiatives to Monopsonize Wholesale Markets.**

PJM states that, “[i]t is true, at least in the short term, that the costs incurred to prevent an individual unit from retiring can be more than offset by the “savings” that result from keeping

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<sup>29</sup> See, PJM Answer, at 20, n.38 (citing *NJ Bd. Of Pub. Utils. v. FERC*, 744 F.3d 74, 101 (3d Cir. 2014) (“*NJBPU*”) (quoting *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145, at P 90 (2011)).

<sup>30</sup> *Id.*

<sup>31</sup> PJM Answer, at 20. PJM’s submitted MOPR-Ex tariff language requires the Independent Market Monitor to “evaluate the efficacy of state public policy programs.” Attachment D Section 5.14 (h)(8)(b). For the reasons stated, any such evaluation inappropriately invades State jurisdiction.

prices artificially low.”<sup>32</sup> While PJM points to states other than Illinois, this PJM statement could be read as an insinuation that state energy legislation is being proposed or adopted with the intent to suppress PJM’s capacity auction clearing prices and produce overall lower capacity costs for state ratepayers, even taking into account the costs of compensation for ZECs. In short, PJM appears to be suggesting that state energy policy constitutes an attempt to monopsonize PJM markets. While MOPR should rightly be applied to market participant attempts to monopsonize, PJM’s efforts to resuscitate its MOPR-Ex proposal with the notion that state energy statutes constitute the exercise of monopsony power has no credibility and should be rejected.

The ICC has repeatedly explained that Illinois’ ZES statute and RPS statute were not designed with any intent to alter or impact PJM’s auction prices. Rather, these statutes are designed, as stated therein, to address Illinois’ environmental and public health concerns. These are legitimate state concerns which are not accounted for in PJM’s auction design.

**C. The Commission Should Not Accept PJM’s Premises Regarding Offer Price Suppression or Clearing Price Suppression Without Evidence.**

PJM and the IMM continue to urge the Commission to accept their assertions about offer price suppression and auction clearing price suppression as “axiomatic.”<sup>33</sup> As highlighted in the ICC’s Protest, PJM and the IMM possess all auction data and, if such information supported the assertions of price suppression, surely PJM and the IMM would have cited the data. However, the glimpse of data PJM chooses to share, demonstrates the opposite conclusion. The base residual auction for the 2021-2022 delivery year, where presumably all of the “massively subsidized” offers were made but not corrected by PJM’s current Repricing or MOPR-Ex proposal, resulted in an auction with a clearing price more than eighty percent higher than the

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<sup>32</sup> PJM Answer, at 7.

<sup>33</sup> PJM Answer, at 21; IMM Answer, at 9.

prior year.<sup>34</sup> Hence, PJM’s claim that price suppression resulting from subsidies is “axiomatic” is not supported by any evidence.

Like PJM, the IMM asserts that “subsidies for some uneconomic resources will increase the economic pressure on other resources leading to more requests for subsidies.”<sup>35</sup> However, all units offering into PJM’s auction feel economic pressure to be marginal or infra-marginal. Economic pressure is a simple reality of any market. Besides, the driver for state policy initiatives is public policy, primarily environmental and public health. If additional resource owners were to make more requests for environmental and public health legislation, society would be better off, not worse.

The IMM also asserts that, “[s]tate specific subsidies to uneconomic resources are the cause of oversupply.”<sup>36</sup> The line between what is “economic” and what is “uneconomic” is determined by PJM’s market design—it is not immutable. Accounting for negative externalities would directly alter which units are economic and which are uneconomic.

**D. PJM’s Recommendation that Restructured States Return to Traditional Regulation is Unnecessarily Confrontational and Avoids the Real Issue.**

PJM asserts that “certain states in PJM decided by legislation to demure from the active exercise of picking and choosing generation resources, to instead rely on federally regulated competitive electricity markets to handle this resource adequacy function on their behalf.”<sup>37</sup> Although some states chose to introduce greater reliance on competition, none gave up any jurisdictional ground to regulate generation within their geographic boundaries. Indeed, states have exercised their jurisdiction over resources through RPS and similar programs for years. In

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<sup>34</sup> PJM Answer, at 11.

<sup>35</sup> IMM Answer, at 9.

<sup>36</sup> IMM Answer, at 11.

<sup>37</sup> PJM Answer, at 18, n.34.

addition, states never agreed to waive any of their rights under the Federal Power Act<sup>38</sup> as recently affirmed by the Supreme Court in *Hughes*.<sup>39</sup>

Since its initial engagement with PJM fifteen years ago, the ICC has worked with PJM to improve wholesale markets. Nevertheless, in recent years PJM's markets began failing to satisfy not only Illinois' but also other state's evolving objectives, thereby meriting supplemental state actions. PJM's proposed response to these supplemental state actions, as represented in its April 9 Filing, will drive states even further away from PJM's markets, rather than drawing them closer to work together to make improvements. For that reason, adoption of either of PJM's current proposals is likely to be more harmful to the long-term viability of PJM's markets than maintaining the flawed status quo. As a result, the ICC and other state regulators fervently plead with PJM to cease its combativeness and work collaboratively with the states, and other stakeholders, to find a mutually acceptable path forward regarding PJM's current concerns as the parties had historically accomplished.

In the past, PJM successfully worked with the states to achieve positive outcomes. For example, PJM and the states found a way for vertically integrated utilities subject to traditional retail regulation to join PJM as members, and to accommodate the regulatory practices in those states. Other states supported PJM's initiative in that regard. Contrary to PJM's assertion in its Answer,<sup>40</sup> these vertically integrated utilities were not uniformly required to participate in the Fixed Resource Requirement alternative as a condition of joining PJM.<sup>41</sup> Both the load and the resources of some of these vertically integrated utilities are in PJM's capacity auction.

Integration of these vertically integrated utilities in conjunction with participation in the capacity

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<sup>38</sup> See, e.g., 16 U.S.C. 824(b)(1).

<sup>39</sup> *Hughes v. Talen Energy Mktg, L.L.C.*, 136 S. Ct. 1288, at 1292 (2016).

<sup>40</sup> PJM Answer, at 28.

<sup>41</sup> *Id.*

auction undoubtedly affects the auction clearing price and imposes impacts, both positive and negative, on other states and market participants. Market participants have adjusted their expectations accordingly, and states understand, and expect, that other states' policies will have impacts (both positive and negative) that cross state boundaries, in some cases, to the entirety of the PJM region. PJMs' markets have not fallen apart. There was no need for massive expansion of the MOPR or other administrative manipulations to alter auction clearing prices. Instead, day-to-day business proceeded as usual.

Contrast this history with PJM's current proposal. PJM is actively driving certain states to abandon wholesale market participation, specifically urging them to "assume resource adequacy responsibility, pursue integrated resource planning to discharge this responsibility with the resource mix it prefers, and regulate the revenues and returns for these resources."<sup>42</sup> PJM laments that the stakeholder process was ineffectual and would not result in a plan satisfactory to all.<sup>43</sup> However, there must be a way to maintain wholesale electricity market integrity short of expelling all of the market participants from retail restructured states, or driving them to withdraw by imposing onerous conditions such as MOPR-Ex or Repricing, neither of which respect state authority.

#### **E. PJM's Recent Press Release Demonstrates that Preserving the Status Quo is an Option.**

In its Answer, PJM asserts that the status quo "is not an option."<sup>44</sup> However, one week later, PJM described its grid as "more reliable than ever" with "billions of dollars of new investment."<sup>45</sup> In its June 1, 2018 press release, PJM discusses the 2021-2022 capacity auction

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<sup>42</sup> PJM Answer, at 18.

<sup>43</sup> April 9 Filing, at 40-41; PJM Answer, at 21.

<sup>44</sup> PJM Answer, at 1.

<sup>45</sup> PJM Press Release, PJM Statement on Potential Department of Energy Market Intervention, June 1, 2018. <http://pjm.com/-/media/about-pjm/newsroom/2018-releases/20180601-pjm-statement-on-potential-doe-market-intervention.ashx>.

and proclaims, “clearing prices increased dramatically, upwards of 80% from the previous year’s auction.”<sup>46</sup> PJM elaborated that there is no need for “drastic action” as its capacity auction for 2021/2022 secured a reliable supply of electricity with an increased amount of coal resources and a diverse mix of other sources of generation, including new investment.<sup>47</sup> Although PJM’s status quo is not ideal,<sup>48</sup> we agree that there is no need for “drastic action,” particularly in the form of MOPR-Ex or Repricing.

#### IV. CONCLUSION

WHEREFORE, the ICC requests that the Commission grant this Motion to Strike, grant this Motion for Leave to Answer, and consider this Answer in the deliberations in this proceeding. The ICC further requests any and all other appropriate relief.

Respectfully submitted,

*/s/Christine F. Ericson*

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ILLINOIS COMMERCE COMMISSION

Dated: June 14, 2018

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<sup>46</sup> PJM Answer, at 11.

<sup>47</sup> *Id.*

<sup>48</sup> In part, PJM’s status quo is not ideal because it does not account for negative externalities of air emissions. Also, the status quo applies a MOPR to resources that have not been demonstrated to have exercised market power in an attempt to drive clearing prices lower, or even have any incentive to obtain lower clearing prices.

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing document of the Illinois Commerce Commission to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding, a copy of which is attached, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 14<sup>th</sup> day of June, 2018.

*/s/ Christine F. Ericson*

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