

144 FERC ¶ 61,238  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

PJM Interconnection, LLC

Docket No. ER13-2052-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued September 27, 2013)

1. On July 29, 2013, PJM Interconnection, LLC (PJM) filed pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> a new Market Monitoring Services Agreement (MMSA) between it and Monitoring Analytics, LLC (Monitoring Analytics or Independent Market Monitor (IMM)),<sup>2</sup> as PJM Rate Schedule FERC No. 46 (July 29 Filing). In this order, the Commission accepts PJM's new MMSA for filing, to become effective on the date of issuance of this order, as requested by PJM.<sup>3</sup>

**I. Background**

2. The new MMSA replaces the current MMSA, which expires at the end of its current six-year term on July 31, 2014. In anticipation of the expiration of the current MMSA and consistent with Attachment M of the PJM Open Access Transmission Tariff (PJM's Market Monitoring Plan), the PJM Board of Managers (PJM Board or Board) provided notice to stakeholders requesting comments regarding the continuation of market monitoring services after the current term, including comments on a potential request for proposals to select a market monitor.

---

<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> Consistent with PJM's Filing, this order will use the terms Monitoring Analytics and IMM interchangeably.

<sup>3</sup> PJM included an indeterminate proposed effective date in the filing. Commission staff will revise the effective date in eTariff so no further filing by PJM is necessary to revise the effective date.

3. According to PJM, many of the commenters suggested that the PJM Board continue to obtain market monitoring services from Monitoring Analytics rather than proceed with a request for proposals. Based on the aforementioned, the PJM Board entered into negotiations with Monitoring Analytics, resulting in the new MMSA now before us. PJM notes that the new MSA, while similar to the current MMSA, clarifies the roles and responsibilities of the PJM Board and the IMM, promotes their communication and cooperation to implement the PJM Market Monitoring Plan, and underscores the importance of independent market monitoring while clarifying the PJM Board's review of the IMM's implementation of the new MMSA.<sup>4</sup>

4. PJM observes that although Attachment M allows for extension of market monitoring contracts for subsequent term(s) of at least three years, PJM and Monitoring Analytics have agreed to a longer term for the new MMSA, extending the new MMSA to December 31, 2019.

5. Finally, PJM notes that this filing does not propose any changes to Attachment M, the Appendix to Attachment M, Tariff Schedule 9-MMU, or the Services Level Agreement (PJM Rate Schedule FERC No. 47).<sup>5</sup>

## II. New MMSA

6. PJM asserts that the new MMSA is similar to the current MMSA, but reflects the experience gained over the nearly five-year period the current MMSA has been in effect.<sup>6</sup> PJM states that the principal revisions provide greater specificity regarding the manner in which the IMM will inform the PJM Board about its activities and how the PJM Board will perform its role. PJM notes that several provisions have been added to promote communication and cooperation between the IMM and the PJM Board to ensure that PJM's markets remain competitive and free of market manipulation. PJM states that the principal revisions to the MMSA are found in new section 11, in section 27, and in section 28.

7. New section 11, IMM Representations, requires the IMM to make various contractual representations regarding the qualifications, experience, and lack of conflicts

---

<sup>4</sup> Transmittal Letter at 1.

<sup>5</sup> The Services Level Agreement is an agreement between PJM and Monitoring Analytics that defines and supports the transfer, access to, exchange, retention, and protection of data between PJM and Monitoring Analytics. The Services Level Agreement will continue to be effective continuous with the New MMSA. *Id.* at 3.

<sup>6</sup> *Id.*

of the principals of Monitoring Analytics;<sup>7</sup> establishes a deadline for the IMM to submit its annual budget, including the key drivers of potential increases and decreases;<sup>8</sup> ensures that Monitoring Analytics discloses any business relationships with PJM personnel or PJM members and that no relationship between Monitoring Analytics and PJM or a PJM market participant or affiliates exists that would contravene the Code of Ethics set forth in Attachment M;<sup>9</sup> and requires Monitoring Analytics to identify its present engagements on behalf of or against any interested party.<sup>10</sup>

8. Section 27, Adequate Performance Under Attachment M, (formerly section 26), clarifies the parties' expectations regarding the manner in which the IMM keeps the PJM Board informed and the manner in which the PJM Board evaluates whether the IMM is adequately performing its function. PJM notes that while the PJM Board, in accordance with Attachment M and the new MMSA, will evaluate the IMM's performance of its functions, section 27 acknowledges that the PJM Board has no authority to manage or direct the activities of the independent market monitoring function. To accomplish these objectives, section 27 provides for regular performance reviews, either annually or semi-annually at the PJM Board's discretion. PJM states that the purpose of these performance reviews "is to fulfill the PJM Board's role of evaluating the performance of the PJM contract for market monitoring services and to ensure adequate contractual performance of the market monitoring function; [these reviews are] not in the nature of a performance review of an employee in an employer-employee context."<sup>11</sup> PJM states that to enhance communication between the parties, section 27 also requires the IMM to meet with the PJM Board, at the Board's request, "to explain its methods, systems, analyses, finding[s], conclusions, and work product" and to respond to questions about these matters.<sup>12</sup> Section 27 provides a nonexclusive list of matters the PJM Board may evaluate in reviewing the IMM's performance. Finally, the section specifies how the parties will communicate regarding the PJM Board's review of performance, establishing notice requirements and procedures.

9. PJM states that the new section 28, Communication and Cooperation, is intended to facilitate communications and help ensure that the PJM Board and Monitoring

---

<sup>7</sup> New MMSA, subsections 11.1 and 11.2.

<sup>8</sup> New MMSA, subsection 11.3.

<sup>9</sup> New MMSA, subsection 11.4.

<sup>10</sup> New MMSA, subsection 11.5.

<sup>11</sup> Transmittal Letter at 4.

<sup>12</sup> *Id.* quoting New MMSA, section 27.

Analytics are aware of each other's concerns.<sup>13</sup> The section provides that the PJM Board and the IMM will meet at PJM Board meetings and at additional times if requested by the Board, and that Board members may contact the IMM at any time with questions about the IMM's positions or any other matter of concern to the Board. The section further states that, "[i]n order to continue cooperative interaction between PJM and the IMM, the Parties have jointly drafted a document setting out the Parties' intent, 'Protocol for Improved Interaction,' which has been posted on the PJM and IMM websites."<sup>14</sup>

10. PJM states that the new MMSA clarifies various other provisions of the existing agreement based on the experience of PJM and the IMM. These include changes to section 1, Definitions; section 3, Term; section 6, General Statement of Services; section 8, Data Access; section 9, Informal Communications; section 12, Dispute Resolution, section 17, Branding; section 18, Conflicts of Interest; Section 21, Intellectual Property; section 26, No Third Party Beneficiaries; and section 33, Assignment. PJM notes that the new MMSA also removes provisions no longer necessary in light of the transition from an internal to external market monitoring function. These include changes to section 5, Payment; section 7, Location and Physical Address; section 10, Staffing; and section 14, IMM Employee Benefit Plans.

11. PJM and Monitoring Analytics ask that the new MMSA become effective as of the date the Commission issues an order accepting the new MMSA for filing, but no later than September 28, 2013.<sup>15</sup>

### **III. Notice and Responsive Pleadings**

12. Notice of PJM's July 29 Filing was published in the *Federal Register*, 78 Fed. Reg. 49,500 (2013), with interventions and protests due on or before August 19, 2013. Timely motions to intervene were filed by the Organization of PJM States, Inc., (OPSI), PJM Industrial Customer Coalition (PJMICC), PJM Power Providers Group, American Municipal Power, Inc., Daytona Power and Light Company, the IMM, First Energy Service Company, District of Columbia Office of the People's Counsel, New Jersey Division of Rate Counsel, Old Dominion Electric Cooperative, NRG Companies, Maryland Office of People's Counsel, Pennsylvania Office of Consumer Advocate, Consumer Advocate Division of West Virginia, Delaware Division of the Public

---

<sup>13</sup> Transmittal Letter at 5.

<sup>14</sup> New MMSA, section 28.

<sup>15</sup> Transmittal Letter at 9. PJM states that it included a placeholder effective date of 12/31/9998 in the metadata of the submitted eTariff sections, and consents to the Commission in its order on this filing replacing the date with the actual effective date determined by the Commission.

Advocate, and a notice of intervention was filed by the Indiana Utility Regulatory Commission. An out-of-time motion to intervene was filed by Exelon Corporation. On August 13, 2013, OPSI filed timely comments in support of the filing and on August 19, 2013, the PJM Customer Group filed comments requesting the Commission to condition approval of the new MMSA.<sup>16</sup> PJM and the IMM filed an answer to the comments on August 28, 2013. OPSI filed an answer on August 30, 2013.

**A. OPSI Comments**

13. OPSI supports the new MMSA, and asks that the Commission accept it as filed. OPSI calls the Commission's attention to clarifying language contained in PJM's transmittal letter, which it states is of importance. In addition to approving the filing, OPSI asks that the Commission, first, direct PJM to provide the OPSI Advisory Committee a reasonable opportunity to review and comment on any proposed changes in the contractual relationship between PJM and the IMM, to be made either expressly or in practice, prior to execution, that may affect the independent market monitoring function directly or indirectly, or that may affect the performance of market monitoring duties under Attachment M. Second, OPSI asks that the Commission direct the IMM to provide notice as soon as practicable to the PJM Board and the OPSI Advisory Committee of any change in IMM Principals, as identified in section 1.16 of the New MMSA or pursuant to section 33(b) of the New MMSA if Joseph Bowring were no longer to be the Market Monitor.<sup>17</sup>

**B. PJM Customer Group Comments**

14. PJM Customer Group supports the PJM Board's decision to retain Monitoring Analytics as the IMM. However, it opines that the new MMSA is not fully consistent with Attachment M and does not incorporate important clarifications contained in the transmittal letter.<sup>18</sup> In particular, PJM Customer Group raises concerns with language in sections 27 and 28 of the new MMSA, and urges the Commission to condition acceptance of the new MMSA on modifications that: (1) incorporate into the agreement language provided in the transmittal letter; and (2) clarify other "ambiguous terms."

---

<sup>16</sup> The PJM Customer Group is comprised of PJMICC, New Jersey Division of Rate Counsel, Maryland Office of People's Counsel, Delaware Division of the Public Advocate, Pennsylvania Office of Consumer Advocate, Old Dominion Electric Cooperative, and the West Virginia Consumer Advocate Division.

<sup>17</sup> OPSI Comments at 9-12.

<sup>18</sup> PJM Customer Group Comments at 1.

15. Specifically, PJM Customer Group asks that the following transmittal letter language be incorporated into the agreement: (1) that performance reviews of the IMM will occur only annually or semi-annually; (2) that performance reviews of the IMM will not be “in the nature of a performance review of an employee in an employer-employee context”; and (3) that the Board’s review of the IMM’s prioritization of activities is not meant to suggest that the Board believes that the IMM must refrain from any particular activity, such as assisting state commissions. PJM Customer Group also requests that the Commission direct that the following changes, which it describes as clarifications, be made to the agreement: (4) that “review” of the nonexclusive list of matters in section 27 only occur in the context of annual or semi-annual performance reviews; (5) that the IMM apprise the Board or PJM of referrals to the Commission “as necessary and appropriate”; (6) that discussion of whether changes to the MMSA are necessary should occur only during annual or semi-annual performance reviews; and (7) that PJM and Monitoring Analytics clarify the legal significance of the “Protocol for Improved Interaction.”

### **C. PJM and Monitoring Analytics’ Joint Response**

16. PJM and Monitoring Analytics assert that the requested changes are unnecessary, outside the limited scope of this proceeding, or both. The parties state that the new MMSA complies with Commission requirements on market monitoring, noting that the Commission accepted PJM’s marketing monitoring compliance filings included in Attachment M and Attachment M-Appendix (the PJM Market Monitoring Plan)<sup>19</sup> as satisfying all the requirements of Order No. 2000<sup>20</sup> and Order No. 719,<sup>21</sup> and it did not require any changes to the existing MMSA to satisfy Order No. 719.

17. In response to claims that the new MMSA requires clarifying revisions, PJM and Monitoring Analytics assert that the parties to the agreement consider its terms clear and

---

<sup>19</sup> See *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,250 (2009); *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,123 (2010); *PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,040 (2011); *PJM Interconnection, L.L.C.*, Letter Order, Docket No. ER11-2074-001 (May 27, 2011).

<sup>20</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001) (Order No. 2000).

<sup>21</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, III FERC Stats. & Regs. ¶ 31,281 (2008), *as amended*, 126 FERC ¶ 61,251, *order on reh’g*, Order No. 719-A, III FERC Stats. & Regs. ¶ 31,292, *reh’g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009) (Order No. 719).

the requested revisions unnecessary. They assert that the carefully chosen language of the new MMSA reflects extensive negotiations between the PJM Board and the IMM, is based on the parties' experience under the current MMSA, and was agreed upon by the parties' because it fulfills their intent and enables them to perform their responsibilities under clear and unambiguous contract terms.<sup>22</sup>

18. PJM and Monitoring Analytics assert that OPSI's request that the Commission recognize its "standing to review any proposed changes in the contractual relationship between PJM and the IMM" and direct PJM to "provide copies of a complete summary of such changes to the OPSI Advisory Committee sufficiently in advance to permit the Commission a reasonable opportunity to review and provide its views before such changes are implemented" is not a matter to be resolved in this proceeding. PJM and Monitoring Analytics assert that any such change would require amending Attachment M and involve the appropriate stakeholder process and subsequent filing with the Commission.<sup>23</sup>

#### **D. OPSI Response**

19. OPSI amends its request to urge that four clarifications found in the transmittal letter be included in the new MMSA in order "to avoid confusion in later years when memories fade and personnel change."<sup>24</sup> The clarifications are: (1) that the Board's performance review of the IMM contract is not in the nature of an employee/employer review; (2) that Board review of the IMM's prioritization of its activities is not a means to control the IMM's interaction with state commissions; (3) that third party beneficiary language is not intended to prevent any entity from commenting on the new MMSA or pursuing available regulatory relief; and (4) that the IMM is to notify the OPSI Advisory Committee as well as the PJM Board as soon as practicable of any change to principals identified in the agreement.

### **IV. Discussion**

#### **A. Procedural Matters**

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We also

---

<sup>22</sup> PJM and Monitoring Analytics Answer at 4.

<sup>23</sup> *Id.* at 6-7.

<sup>24</sup> OPSI Answer at 1.

will grant the untimely motion to intervene given the party's interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), (2013) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept answers filed because they have provided information that assisted us in our decision-making process.

**B. Commission Determination**

22. The Commission accepts for filing the revised MMSA between PJM and Monitoring Analytics, to become effective upon issuance of this order. As discussed below, we find that the agreement, without additional clarifications or commitments, is just and reasonable and not unduly discriminatory or preferential. While we appreciate the comments of PJM Customer Group and OPSI, neither has persuaded us that changes to the new MMSA are required in order to render the agreement just and reasonable or in compliance with Commission market monitoring requirements.

23. We agree with PJM that the new MMSA is consistent with the Commission's market monitoring requirements found in Order No. 2000, Order No. 719 and Attachment M. As noted by PJM, no changes to the existing MMSA were required to satisfy Order No. 719, and the new MMSA follows the model of the existing one. The revisions made by PJM and the IMM to the existing agreement clarify the roles and responsibilities of the PJM Board and the IMM, promoting their communication and cooperation to implement the PJM Market Monitoring Plan.

24. While PJM Customer Group contends that the new MMSA is "not fully consistent with Attachment M," it does not identify how the agreement's alleged deficiencies violate Attachment M, nor does it identify the aspects of Attachment M it believes are violated. We do not see how the new MMSA might "be used by PJM or the PJM Board to interfere, directly or indirectly, with the IMM's performance of its duties."<sup>25</sup> We do not, for example, share PJM Customer Group's concern that the requirement that the IMM notify the PJM Board of referrals to the Commission could impede the IMM from bringing matters to the attention of the Commission quickly when required. Nor do the IMM or PJM share the concern. As stated in their joint answer, the IMM is satisfied that it can communicate with the Commission without interference under the new MMSA.

---

<sup>25</sup> PJM Customer Group Comments at 4.

Moreover, as noted by these parties, the Commission will not permit its ability to receive independent and timely communication from the IMM to be compromised.<sup>26</sup>

25. We note that PJM and the IMM have made certain commitments, reflected in the transmittal letter, including: (1) that Board performance review of the IMM will occur annually or semi-annually; (2) that Board performance review of the IMM will not be “in the nature of a performance review of an employee in an employer-employee context;” (3) that Board review of the IMM’s prioritization of its activities does not imply that the IMM should refrain from any particular activity, such as assisting state commissions; (4) that the limitation of remedies provision under the agreement is not intended to limit the rights of any party to comment on the agreement or to pursue relief before the Commission; and (5) that the IMM notify the OPSI Advisory Committee of any change in its principals. Commenters urge that this transmittal letter language be incorporated into the agreement. In their answer, PJM and the IMM respond that the parties to the agreement consider the terms of the new MMSA clear and revisions unnecessary. PJM and the IMM note that the language of the agreement was carefully chosen, fulfills the parties’ intent, and enables the parties to perform their responsibilities under clear and unambiguous contract terms. While the additional commitments made in the transmittal letter appear to address many concerns of the commenters, the failure to include them in the agreement does not make the agreement noncompliant with the dictates of Order No. 2000, Order No. 719, Attachment M or the FPA. We will therefore not require PJM to amend the new MMSA to include these statements. We do, however, expect that PJM and the IMM, having made commitments in the transmittal letter, will abide by them.

26. PJM Customer Group makes three further requests,<sup>27</sup> and OPSI requests that the Commission direct PJM and the IMM to confer with the OPSI Advisory Committee prior to any change in the contractual relationship between the two parties. We do not find it necessary to reject or amend the agreement with respect to these items as we find the agreement complies with the Commission’s market monitoring requirements. In the event that commenters or other stakeholders identify specific problems that arise in the

---

<sup>26</sup> PJM and Monitoring Analytics Answer at 5. The Answer also responds to a PJM Customer Group concern that the IMM should not be required to tell the PJM Board when it has made a referral to the Commission about PJM’s administration of market rules. The Answer explains that the new MMSA does not address referrals regarding PJM conduct, but rather only addresses referrals of “suspected market violations” by market participants.

<sup>27</sup> These requests are: that the legal significance of the “Protocol for Improved Interaction” be clarified; that the new MMSA state that review of the nonexclusive list of matters in section 27 only occur in the context of performance reviews; and that discussion of the need for changes to the MMSA should occur only during annual or semi-annual performance review.

implementation of the new MMSA, these problems may be brought to the attention of the Commission.

The Commission orders:

The proposed new MMSA is hereby accepted for filing, to become effective as of the date of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.