

decision-making process by giving PJM an opportunity to respond to the Market Monitor's Comments to PJM's proposed amendments relating to Maintenance Adders and operating costs. PJM therefore requests that the Commission accept this Answer.

III. ANSWER

A. PJM's Proposal Is Narrowly Tailored to Enhance the Review and Approval Process for Maintenance Adders and Operating Costs.

As explained in PJM's February 17 Filing,⁶ PJM proposal in this docket is narrowly focused to enhance the existing review and approval process for Maintenance Adders and operating costs. Nothing in PJM's proposed revision changes the existing requirement that Maintenance Adders and operating costs can only be recovered in energy market offers and not in capacity market offers. To the contrary, PJM's proposal maintains this existing construct and simply proposes to (1) delineate Maintenance Adders into major and minor maintenance, (2) establish default minor maintenance and operating cost adders, and (3) eliminate the annual review requirement for Market Sellers that elect to use such default adders.

Notably, the Market Monitor agrees that PJM's proposal generally "simplifies PJM's administrative review process" and does not contest any of the proposed default values in the filing.⁷ However, the Market Monitor's comments focus on an issue that is entirely outside the scope of PJM's instant filing submitted pursuant under section 205 of

[Pipeline Co.]'s Answer because they have provided information that assisted us in our decision-making process.").

⁶ *PJM Interconnection, L.L.C.*, Proposed Revisions to the Review of Maintenance Adders and Operating Costs, Docket No. ER23-1138-000 (Feb. 17, 2023) ("February 17 Filing").

⁷ Market Monitor Comments at 4.

the Federal Power Act.⁸ Namely, the Market Monitor’s protest is focused on its continued contention that the maintenance costs are not short run marginal costs.

These same arguments were previously raised by the Market Monitor in Dockets Nos. ER19-210-000 and EL19-8-000.⁹ Indeed, significant portions of the Market Monitor’s comments are copied and pasted directly from its protests filed in 2018.¹⁰ These arguments represent a collateral attack of the Commission’s 2019 order where it previously expressly “disagree[d] with the IMM’s assertion that major maintenance costs are not short run costs of electric production and thus should not be included in cost-based energy market offers.”¹¹ In that order, the Commission addressed the very same contentions that the Market Monitor continues to raise here and explained that:

The IMM’s argument rests on the assumption that because major maintenance costs are not incurred at the time of production, they are not short-run marginal costs, and, therefore, should be recovered through the capacity market. We disagree. The wear and tear of operating a resource is typically based on the number of starts or run hours, and the maintenance intervals can be influenced by resource output levels. As such, it is reasonable to assume that some maintenance costs are incurred as the result of operating the resource, even if such costs are not incurred immediately at the time of production. We thus decline to adopt the IMM’s preferred definition of includable energy market costs (i.e., what the IMM identifies as short-run marginal costs), which would not include variable maintenance costs that are incurred as a direct result of electric production and thus would be too restrictive.¹²

⁸ 18 C.F.R. Part 35.

⁹ *PJM Interconnection, L.L.C.*, Protest of the Independent Market Monitor for PJM, Docket No. ER19-210-000 (Nov. 20, 2018) (Market Monitor ER19-210 Protest); *PJM Interconnection, L.L.C.*, Protest of the Independent Market Monitor for PJM, Docket No. EL19-8-000 (Nov. 20, 2018) (Market Monitor EL19-8 Protest).

¹⁰ For instance the first three paragraphs of the Market Monitor’s arguments on page 3 of its comments contain identical language that was previously submitted in its prior protests. *Compare* Market Monitor Comments at 3 *with* Market Monitor EL19-8 Protest at 4-7.

¹¹ *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,030, at P 42 (2019).

¹² *Id.* at P 43.

Simply put, the Market Monitor’s comments improperly attempt to relitigate what the Commission has already decided in a separate order that previously already addressed the Market Monitor’s contentions. Worse, the Market Monitor now attempts to inject the same arguments in this section 205 filing, which are entirely outside the scope of this narrowly targeted proposal. Courts have explained that when an “objection is aimed not at the order purportedly under review but instead at an earlier [Commission] order, it is barred as a collateral attack on the earlier order.”¹³ Similarly, in the context of Commission proceedings, the Commission has concluded that raising an issue that has previously been addressed by the Commission amounts to an untimely collateral attack on a prior order.¹⁴ Here, it is undeniable that the Market Monitor’s arguments amount to a collateral attack of the Commission’s 2019 order. In fact, the Market Monitor’s Comments expressly requests the Commission “to *reverse the recent changes* and return maintenance costs to capacity market offers and exclude maintenance costs from energy market offers in order to improve the efficiency and competitiveness of PJM markets.”¹⁵

The Market Monitor attempts to show “new facts” by arguing that “only 53 percent of units that were marginal in the energy market included maintenance costs in their energy offers in 2022” is unavailing.¹⁶ As an initial matter, it is unclear how the Market Monitor developed this figure as no underlying data is presented to support this conclusion. Even assuming, *arguendo*, that this statistic is accurate, there could be many reasons that could explain this statistic. For instance, given that marginal resources can be committed based

¹³ *Cent. Hudson Gas & Elec. Corp. v. FERC*, 783 F.3d 92, 103 (2d Cir. 2015)

¹⁴ *See, e.g., Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,285, at P 226 (2008)

¹⁵ Market Monitor Comments at 5 (emphasis added).

¹⁶ *Id.*

on either market-based or cost-based offers, if a marginal resource is committed on its market-based offer, there would be no evidence that maintenance cost were or were not included in such an offer. More importantly, whether or not a Market Seller elects to include maintenance costs in their adders does not dispel the fact that “maintenance costs are incurred as the result of operating the resource.”¹⁷ In short, this statistic simply does not demonstrate that maintenance costs are not short run marginal costs, which was the issue the Commission already decided contrary to the Market Monitor’s arguments in a prior proceeding.

The Market Monitor’s contention regarding the Reliability Must Run (“RMR”) agreement with Indian River is also unpersuasive. Unlike other resources, it is acceptable for RMR units to include their maintenance payment in the RMR payments because they would otherwise not be able to recover such costs during the annual Maintenance and Operating Cost process. This is because under the existing maintenance and operating cost review process, Market Sellers can submit ten years of maintenance history and up to a five year operating cost history. In the energy market, Market Sellers of resources recover the average cost of those maintenance and operating cost histories going forward after they have expended the cost. However, RMR units are not able to recover those maintenance or operating cost in an upcoming annual review process because the units will be retired by then. Therefore, the mere fact that the RMR agreement with Indian River includes maintenance costs is not proof that such costs are fixed or not directly related to the production of energy.

¹⁷ *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,030, at P 43 (2019).

III. CONCLUSION

PJM's section 205 filing is the improper procedural vehicle for the Market Monitor to dispute the existing Commission accepted rules that require maintenance costs to be included in energy market offers and not in capacity market offers. Based on the foregoing, the Commission should accept the proposed Tariff revisions in the February 17, 2023 filing, effective June 1, 2023, as requested.

Respectfully submitted,

Craig Glazer
Vice President – Federal Government Policy
PJM Interconnection, L.L.C.
1200 G Street, N.W.
Suite 600
Washington, D.C. 20005
(202) 423-4743
Craig.Glazer@pjm.com

/s/ Chenchao Lu
Chenchao Lu
Associate General Counsel
PJM Interconnection, L.L.C.
2750 Monroe Boulevard
Audubon, PA 19403
(610) 666-2255
Chenchao.Lu@pjm.com

On behalf of
PJM Interconnection, L.L.C.

March 24, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Audubon, PA, this 24th day of March 2023.

/s/ Chenchao Lu
Chenchao Lu